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प्राचीनतम्

EXTRAORDINARY

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PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में विशेष पृष्ठ संख्या दी जाती है जिसमें कि यह ग्रलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on the 9th May, 1968:—

BILL NO. 51 OF 1968

A Bill to make provision for the appointment and functions of certain authorities for the investigation of administrative action taken by or on behalf of the Government or certain public authorities in certain cases and for matters connected therewith.

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Lokpal and Lokayuktas Act, 1968. Short title, extent and commencement.
- 5 (2) It extends to the whole of India and applies also to public servants outside India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In this Act unless the context otherwise requires,— Definitions.
- 10 (a) "action" means action taken by way of decision, recommendation or finding or in any other manner and includes failure to act and all other expressions connoting action shall be construed accordingly;

(b) "allegation", in relation to a public servant, means any affirmation that such public servant,—

(i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person, 5

(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives, or

(iii) is guilty of corruption, lack of integrity or improper conduct in his capacity as such public servant; 10

(c) "competent authority", in relation to a public servant, means,—

(i) in the case of a Minister or Secretary The Prime Minister,

(ii) in the case of any other public servant such authority as may be prescribed; 15

(d) "grievance" means a claim by a person that he sustained injustice in consequence of maladministration;

(e) "Lokpal" means a person appointed as the Lokpal under section 3;

(f) "Lokayukta" means a person appointed as a Lokayukta under section 3;

(g) "maladministration" means action taken or purporting to have been taken in the exercise of administrative functions in any case,— 25

(i) where such action or the administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory; or

(ii) where there has been negligence or undue delay in taking such action, or the administrative procedure or practice governing such action involves undue delay; 30

(h) "Minister" means a member of the Council of Ministers, by whatever name called, for the Union and includes a Deputy Minister; 35

(i) "officer" means a person appointed to a public service or post in connection with the affairs of the Union;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "public servant" denotes a person falling under any of the descriptions hereinafter following, namely:—

5 (i) every Minister referred to in clause (h),

(ii) every officer referred to in clause (i),

(iii) every member of the Council of Ministers in a Union territory as defined in the Government of Union Territories Act, 1963, and in the case of the Union territory of Delhi, every member of the Executive Council constituted under the Delhi Administration Act, 1966,

20 of 1950.

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19 of 1966.

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1 of 1950. 20

21 of 1860.

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(l) "Secretary" means,—

(i) a Secretary, a Special Secretary, or an Additional Secretary, to the Government of India in any Ministry or Department,

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(ii) a Secretary, a Special Secretary, or an Additional Secretary, in the Cabinet Secretariat, Prime Minister's Secretariat, or as the case may be, the office of the Planning Commission,

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and includes a Joint Secretary in independent charge of such Ministry, Department, Secretariat or, as the case may be, the office of the Planning Commission.

Appoint-
ment of
Lokpal
and
Loka-
yuktas

3. (1) For the purpose of conducting investigations in accordance with the provisions of this Act, the President shall, by warrant under his hand and seal, appoint a person to be known as the Lokpal and one or more persons to be known as the Lokayukta or Lokayuktas:

Provided that,—

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(a) the Lokpal shall be appointed after consultation with the Chief Justice of India and the Leader of the Opposition in the House of the People, or if there be no such Leader, a person elected in this behalf by the Members of the Opposition in that House in such manner as the Speaker may direct;

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(b) the Lokayukta or Lokayuktas shall be appointed after consultation with the Lokpal.

(2) Nothing contained in clause (b) of the proviso to sub-section (1) shall apply in the case of the appointment of the first Lokayukta under this section.

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(3) Every person appointed as the Lokpal or a Lokayukta shall, before entering upon his office, make and subscribe, before the President, or some person appointed in that behalf by the President, an oath or affirmation in the form set out for the purpose in the First Schedule.

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(4) The Lokayuktas shall be subject to the administrative control of the Lokpal and, in particular, for the purpose of convenient disposal of investigations under this Act, the Lokpal may issue such general or special directions as he may consider necessary to the Lokayuktas:

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Provided that nothing in this sub-section shall be construed to authorise the Lokpal to question any finding, conclusion or recommendation of a Lokayukta.

Lokpal or
Lokayukta
to hold
no other
office

4. The Lokpal or a Lokayukta shall not be capable of being a member of Parliament or a member of the Legislature of any State and shall not hold any office of trust or profit (other than his office as the Lokpal or, as the case may be, a Lokayukta), or be connected with any political party or carry on any business and accordingly before he enters upon his office, a person appointed as the Lokpal or, as the case may be, as a Lokayukta, shall,—

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(a) if he is a member of Parliament or of the Legislature of any State resign such membership;

(b) if he holds any office of trust or profit, resign from such office;

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(c) if he is connected with any political party, sever his connection with it; or

5 (d) if he is carrying on any business, sever his connections (short of divesting himself of ownership) with the conduct and management of such business.

5. (1) Every person appointed as the Lokpal or a Lokayukta shall hold office for a term of five years from the date on which he enters upon his office but shall be eligible for re-appointment for not more than one term:

Term of office and other conditions of service of Lokpal and Lokayukta.

10 Provided that,—

(a) the Lokpal or a Lokayukta may, by writing under his hand addressed to the President, resign his office;

(b) the Lokpal or a Lokayukta may be removed from office in the manner specified in section 6;

15 (c) the Lokpal or a Lokayukta, shall notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

20 (2) If the office of the Lokpal or a Lokayukta becomes vacant or if the Lokpal or a Lokayukta is, by reason of absence or for any other reason whatsoever, unable to perform the duties of his office, those duties shall, until some other person appointed under section 3 enters upon such office or, as the case may be, until the Lokpal or such Lokayukta resumes his duties, be performed,—

25 (a) where the office of the Lokpal becomes vacant or where he is unable to perform the duties of his office, by the Lokayukta or if there are two or more Lokayuktas by such one of the Lokayuktas as the President may by order direct;

30 (b) where the office of a Lokayukta becomes vacant or where he is unable to perform the duties of his office, by the Lokpal himself, or if the Lokpal so directs by the other Lokayukta or, as the case may be, such one of the other Lokayuktas as may be specified in the direction.

(3) Save as otherwise provided in sub-section (1), on ceasing to hold office, the Lokpal or a Lokayukta,—

35 (i) shall be ineligible for further employment under the Government of India or for any employment under, or office in,

any such local authority, corporation, Government company or society as is referred to in sub-clause (k) of section 2;

(ii) shall not take up any employment under the Government of a State without the prior permission in writing of the President:

Provided that a Lokayukta shall be eligible for appointment as the Lokpal.

(4) The salary and allowances and other conditions of service of the Lokpal or a Lokayukta shall be such as may be prescribed:

Provided that,—

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(a) in prescribing the salary and allowances and other conditions of service of the Lokpal, regard shall be had to the salary and allowances and other conditions of service of the Chief Justice of India;

(b) in prescribing the salary and allowances and other conditions of service of the Lokayuktas regard shall be had to the salary and allowances and other conditions of service of a Judge of the Supreme Court of India:

Provided further that the salary, allowances and other conditions of service of the Lokpal or a Lokayukta shall not be varied to his disadvantage after his appointment.

Removal of Lokpal or Lokayukta. 6. (1) Subject to the provisions of article 311 of the Constitution, the Lokpal or a Lokayukta may be removed from his office by the President on the ground of misbehaviour or incapacity and on no other ground:

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Provided that the inquiry required to be held under clause (2) of the said article before such removal shall be held by a person appointed by the President, being a person who is or has been a Judge of the Supreme Court of India or the Chief Justice of a High Court.

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(2) The person appointed under the proviso to sub-section (1) shall submit the report of his inquiry to the President who shall, as soon as may be, cause it to be laid before each House of Parliament.

(3) Notwithstanding anything contained in sub-section (1), the President shall not remove the Lokpal or a Lokayukta unless an address by each House of Parliament supported by a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal.

7. (1) Subject to the provisions of this Act, the Lokpal may investigate any action which is taken by, or with the general or specific approval of,—

- (i) a Minister or a Secretary; or
- 5 (ii) any other public servant being a public servant of a Loka-class or sub-class of public servants notified by the Central Government in consultation with the Lokpal in this behalf,

in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could 10 have been, in the opinion of the Lokpal, the subject of a grievance or an allegation.

(2) Subject to the provisions of this Act, a Lokayukta may investigate any action which is taken by, or with the general or specific approval of, any public servant not being a Minister, Secretary or 15 other public servant referred to in sub-section (1) in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokayukta, the subject of a grievance or an allegation.

20 (3) Notwithstanding anything contained in sub-section (2), the Lokpal may, for reasons to be recorded in writing, investigate any action which may be investigated by a Lokayukta under that sub-section whether or not a complaint has been made to the Lokpal in respect of such action.

25 (4) Where two or more Lokayuktas are appointed under this Act, the Lokpal may, by general or special order, assign to each of them matters which may be investigated by them under this Act:

Provided that no investigation made by a Lokayukta under this Act and no action taken or thing done by him in respect of such 30 investigation shall be open to question on the ground only that such investigation relates to a matter which is not assigned to him by such order.

8. (1) Except as hereinafter provided, the Lokpal or a Lokayukta shall not conduct any investigation under this Act in the case of a not sub-
35 complaint involving a grievance in respect of any action,—

(a) if such action relates to any matter specified in the Second Schedule; or

(b) if the complainant has or had any remedy by way of proceedings before any tribunal or court of law;

Provided that the Lokpal or a Lokayukta may conduct an investigation notwithstanding that the complainant had or has such a remedy if the Lokpal or, as the case may be, the Lokayukta is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy.

5

(2) The Lokpal or a Lokayukta shall not conduct any investigation in the case of any complaint involving a grievance or an allegation in respect of any action inquired into by, or referred for inquiry to, a Commission of Inquiry under the Commissions of Inquiry Act, 1952.

10 60 of 1952.

(3) The Lokpal or a Lokayukta shall not investigate any complaint involving a grievance against a public servant referred to in sub-clause (iv) of clause (k) of section 2.

(4) The Lokpal or a Lokayukta shall not investigate,—

(a) any complaint involving a grievance, if the complaint is made after the expiry of twelve months from the date on which the action complained against becomes known to the complainant;

(b) any complaint involving an allegation, if the complaint is made after the expiry of five years from the date on which the action complained against is alleged to have taken place:

Provided that the Lokpal or a Lokayukta may entertain a complaint referred to in clause (a), if the complainant satisfies him that he had sufficient cause for not making the complaint within the period specified in that clause.

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(5) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokpal or a Lokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion cannot be regarded as having been properly exercised.

**Provi-
sions re-
lating to
complaints.**

9. (1) Subject to the provisions of this Act, a complaint may be made under this Act to the Lokpal or a Lokayukta,—

(a) in the case of a grievance, by the person aggrieved;

(b) in the case of an allegation, by any person other than a public servant:

Provided that, where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by

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any person who in law represents his estate or, as the case may be, by any person who is authorised by him in this behalf.

(2) Every complaint shall be made in such form and shall be accompanied by such affidavits and other documents as may be prescribed.

(3) Notwithstanding anything contained in any other enactment, any letter written to the Lokpal or a Lokayukta by a person in police custody, or in a gaol or in any asylum or other receptacle for insane persons, shall be forwarded to the addressee unopened and without delay by the police officer or other person in charge of such gaol, asylum or other receptacle.

10. (1) Where the Lokpal or a Lokayukta proposes to conduct any investigation under this Act, he shall,—
Procedure
in respect
of investi-

(a) forward a copy of the complaint or, in the case of any gations.
15 investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefor, to the public servant concerned and the competent authority concerned; and

(b) afford to the public servant concerned an opportunity to offer his comments on such complaint or statement.

20 (2) Every such investigation shall be conducted in private and in particular, the identity of the complainant and of the public servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation

(3) Save as aforesaid the procedure for conducting any such 25 investigation shall be such as the Lokpal or, as the case may be, the Lokayukta considers appropriate in the circumstances of the case

(4) The Lokpal or a Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation, if in his opinion—

30 (a) the complaint is frivolous or vexatious or is not made in good faith; or

(b) there are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or

35 (c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.

(5) In any case where the Lokpal or a Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect

of a complaint, he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

(6) The conduct of an investigation under this Act in respect of any action shall not affect such action, or any power or duty of any public servant to take further action with respect to any matter subject to the investigation. 5

Evidence. 11. (1) Subject to the provisions of this section, for the purpose of any investigation under this Act, the Lokpal or a Lokayukta may require any public servant or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purpose of any such investigation the Lokpal or a Lokayukta shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—¹⁵ 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits; ²⁰

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commissions for the examination of witnesses or documents;

(f) such other matters as may be prescribed. ²⁵

(3) Any proceeding before the Lokpal or a Lokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code. ^{45 of 1860.}

(4) Subject to the provisions of sub-section (5), no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or persons in Government service, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purposes of any investigation under this Act. ³⁰

(5) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document—³⁵

(a) as might prejudice the security or defence or international relations of India (including India's relations with the

Government of any other country or with any international organisation), or the investigation or detection of crime; or

5 (b) as might involve the disclosure of proceedings of the Cabinet of the Union Government or any Committee of that Cabinet,

and for the purpose of this sub-section a certificate issued by a Secretary certifying that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b), shall be binding and conclusive.

10 10 (6) Without prejudice to the provisions of sub-section (4), no person shall be compelled for the purposes of investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a court.

15 12. (1) If, after investigation of any action in respect of which Reports a complaint involving a grievance has been or can be or could have of Lokpal been made, the Lokpal or a Lokayukta is satisfied that such action and Loka-
yuktas. has resulted in injustice to the complainant or any other person, the Lokpal or Lokayukta shall, by a report in writing, recommend to
20 the public servant and the competent authority concerned that such injustice shall be remedied in such manner and within such time as may be specified in the report.

(2) The competent authority to whom a report is sent under sub-
section (1) shall, within one month of the expiry of the term specified
25 in the report, intimate or cause to be intimated to the Lokpal or, as the case may be, the Lokayukta of the action taken for compli-
ance with the report.

(3) If, after investigation of any action in respect of which a complaint involving an allegation has been or can be or could have
30 been made, the Lokpal or a Lokayukta is satisfied that such allegation can be substantiated either wholly or partly, he shall by a report in writing communicate his findings along with the relevant documents, materials and other evidence to the competent authority.

(4) The competent authority shall examine the report forwarded to it under sub-section (3) and intimate within three months of the date of receipt of the report, the Lokpal or, as the case may be, the Lokayukta, the action taken or proposed to be taken on the basis of the report.

(5) If the Lokpal or the Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-sections (1) and (3), he shall close the case under information to the complainant, but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the President and may also at his discretion inform the complainant concerned:

Provided that no such special report shall be made in respect of any action taken in consultation with the Union Public Service Commission.

15

(6) The Lokpal and the Lokayuktas shall present annually a consolidated report on the performance of their functions under this Act to the President.

(7) Where an adverse comment against any person or department or organisation has been made in any annual or special report, such report shall also contain the substance of the defence adduced by the person complained against and the comments made by or on behalf of the department or organisation affected.

(8) On receipt of a special report under sub-section (5), or the annual report under sub-section (6), the President shall cause a copy thereof together with an explanatory memorandum to be laid before each House of Parliament.

(9) Subject to the provisions of sub-section (2) of section 10, the Lokpal may at his discretion make available, from time to time, the substance of cases closed or otherwise disposed of by him or by a Lokayukta, which may appear to him to be of general public, academic or professional interest, in such manner and to such persons as he may deem appropriate.

13. (1) The Lokpal may appoint, or authorise a Lokayukta or any officer subordinate to the Lokpal or a Lokayukta to appoint, officers and other employees to assist the Lokpal and the Lokayuktas in the discharge of their functions under this Act.

Staff of
Lokpal
and
Lokayuk-
tas.

5 (2) The categories of officers and employees who may be appointed under sub-section (1), their salaries, allowances and other conditions of service and the administrative powers of the Lokpal and Lokayuktas shall be such as may be prescribed after consultation with the Lokpal.

10 . . . (3) Without prejudice to the provisions of sub-section (1), the Lokpal or a Lokayukta may utilise the services of any officer or investigating agency of the Central Government or of any other person or agency for the purpose of conducting any investigation under this Act:

15 Provided that the Lokpal or a Lokayukta shall obtain the consent of the Central Government before utilising the services of any officer or agency of that Government.

14. (1) Any information, obtained by the Lokpal or the Lokayuktas or members of their staff in the course of, or for the purposes of any investigation under this Act, and any evidence recorded or collected in connection with such information, shall be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall be entitled to compel the Lokpal or a Lokayukta or any public servant to give evidence relating to such information or produce the evidence so recorded or collected.

Secrecy
of infor-
mation.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars,—

(a) for purposes of the investigation or in any report to be made thereon or for any action or proceedings to be taken on such report;

19 of 1923.

(b) for purposes of any proceedings for an offence under the Indian Official Secrets Act, 1923, or an offence of perjury or for purposes of any proceedings under section 15; or

(c) for such other purposes as may be prescribed.

15 (3) An officer or other authority prescribed in this behalf may give notice in writing to the Lokpal or a Lokayukta, as the case

may be, with respect to any document or information specified in the notice or any class of documents so specified that in the opinion of the Central Government the disclosure of the documents or information or of documents or information of that class would be contrary to public interest and where such a notice is given, nothing in this Act shall be construed as authorising or requiring the Lokpal, the Lokayukta or any member of their staff to communicate to any person any document or information specified in the notice or any document or information of a class so specified.

(4) No person shall publish any proceedings relating to an investigation which is pending before the Lokpal or a Lokayukta, as the case may be; nor shall any person publish such proceedings after the investigation is completed unless prior permission for the publication is obtained from the Lokpal, or the Lokayukta, as the case may be. 10

(5) Whoever contravenes the provisions of sub-section (4) shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

(6) Nothing in sub-sections (4) and (5) shall apply to the publication of any report laid before a House of Parliament under sub-section (8) of section 12. 20

Inten-
tional
insult or
interrup-
tion to,
or bring-
ing into
disrepute,
Lokpal
or Loka-
yukta.

15. (1) Whoever intentionally offers any insult, or causes any interruption to the Lokpal or a Lokayukta, while the Lokpal or the Lokayukta is conducting any investigation under this Act, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. 25

(2) Whoever, by words spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Lokpal or a Lokayukta into disrepute, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. 30

(3) The provisions of section 198B of the Code of Criminal Procedure, 1898, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (1) of the said section 198B, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction— 35

- (a) in the case of the Lokpal, of the Central Government;
- (b) in the case of a Lokayukta, of the Lokpal.

16. (1) No suit, prosecution, or other legal proceeding shall lie against the Lokpal or the Lokayuktas or any member of their staff and employees in respect of anything which is in good faith done or intended to be done under this Act.

5 (2) No proceedings of the Lokpal or the Lokayuktas shall be held bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokpal or the Lokayuktas shall be liable to be challenged, reviewed, quashed or called in question in any court.

10 **17.** (1) The President may, by notification published in the Official Gazette and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta, as the case may be, such additional functions in relation to the redress of grievances and eradication of corruption as may be specified in the notification.

Confer-
ment of
additional
functions
on Lokpal
and Loka-
yuktas,
etc.

15 (2) The President may, by order in writing and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta such powers of a supervisory nature over agencies, authorities or officers set up, constituted or appointed by the Central Government for the redress of grievances and eradication of corruption.

20 (3) The President may, by order in writing and subject to such conditions and limitations as may be specified in the order, require the Lokpal to investigate any action (being action in respect of which a complaint may be made under this Act to the Lokpal or a Lokayukta), and notwithstanding anything contained in this Act the Lokpal shall comply with such order.

25 **18.** The Lokpal or a Lokayukta may, by a general or special order in writing, direct that any powers conferred or duties imposed on him by or under this Act (except the power to make reports to the President under section 12) may also be exercised or discharged by such of the officers, employees or agencies referred to in section 13, as may be specified in the order.

Power to
delegate.

19. (1) The President may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

Power to make
rules.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules may provide for—

(a) the authorities for the purpose required to be prescribed under sub-clause (ii) of clause (c) of section 2;

- (b) the salary, allowances and other conditions of service of the Lokpal and Lokayuktas;
- (c) the time within which, and the form in which, complaints may be made and the documents which shall accompany such complaints and the fees, if any, which may be charged in respect 5 thereof;
- (d) the powers of a civil court which may be exercised by the Lokpal or a Lokayukta;
- (e) any other matter which is to be or may be prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is in the opinion of the President necessary for the proper implementation of this Act. 10

(3) Every rule made under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, 15 20 as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**Removal
of doubts.**

20. (1) For the removal of doubts it is hereby declared that nothing in this Act shall be construed to authorise the Lokpal or a Lokayukta to investigate any action which is taken by or with the approval of— 25

- (a) the Chief Justice or a Judge or an officer or servant of the Supreme Court of India;
- (b) the Chief Justice or a Judge of the Delhi High Court or 30 a Judicial Commissioner, Additional Judicial Commissioner or an Assistant Judicial Commissioner in any Union territory or any District Judge in a Union territory;
- (c) the Comptroller and Auditor-General of India;
- (d) the Chairman or a member of the Union Public Service 35 Commission;
- (e) the Chief Election Commissioner, the Election Commissioners and the Regional Commissioners referred to in article 324 of the Constitution.

saving

21. The provisions of this Act shall be in addition to the provisions of any other enactment or any rule of law under which any remedy by way of appeal, revision, review or in any other manner is available to a person making a complaint under this Act in respect of any action, and nothing in this Act shall limit or affect the right of such person to avail of such remedy.

THE FIRST SCHEDULE

[See section 3 (3)]

I, having been appointed Lokpal to swear
10 a Lokayukta

in the name of God that I will bear true faith and allegiance to the solemnly affirm

Constitution of India as by law established and I will duly and faithfully and to the best of my ability, knowledge and judgment perform
15 the duties of my office without fear or favour, affection or illwill.

THE SECOND SCHEDULE

[See section 8(1) (a)]

(a) Action taken in a matter certified by a Secretary as affecting
the relations or dealings between the Government of India and any
20 foreign Government or any international organisation of States or
Government.

34 of 1962.

31 of 1946.

(b) Action taken under the Extradition Act, 1962, or the
Foreigners' Act, 1946.

(c) Action taken for the purpose of investigating crime or pro-
25 tecting the security of the State including action taken with respect
to passports and travel documents.

(d) Action taken in the exercise of powers in relation to deter-
mining whether a matter shall go to a court or not.

(e) Action taken in matters which arise out of the terms of a
30 contract governing purely commercial relations of the administration
with customers or supplies, except where the complainant alleges
harassment or gross delay in meeting contractual obligations.

(f) Action taken in respect of appointments, removals, pay,
discipline, superannuation or other matters relating to conditions of
35 service of public servants but not including action relating to claims

for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service.

(g) Grant of honours and awards.

STATEMENT OF OBJECTS AND REASONS

The Administrative Reforms Commission was required to consider, among other matters, problems of redress of citizens' grievances, keeping in mind the need for ensuring the highest standards of efficiency and integrity in the public services, and also for making public administration responsive to the people. More specifically, the Commission was expected to examine:

- (i) the adequacy of the existing arrangements for the redress of grievances; and
- (ii) the need for introduction of any new machinery or special institution for redress of grievances.

Giving priority to this part of its terms of reference, the Commission made an interim report in which it took note of the oft-expressed public outcry against the prevalence of corruption, the existence of wide-spread inefficiency and the unresponsiveness of administration to popular needs. It felt that the answer to this lay in the provision of a machinery which would examine public complaints and sift the genuine from the false or the untenable so that the administration's failures and achievements could be publicly viewed in their correct perspective. Such an institution was regarded necessary even from the point of view of affording protection to the services. The Commission, therefore, recommended that there should be a statutory machinery to enquire into complaints alleging corruption or injustice arising out of maladministration.

2. The Bill seeks to give effect to the recommendations of the Administrative Reforms Commission in so far as they relate to matters within the purview of the Union Government. In its scope, it differs from the draft Bill proposed by the Administrative Reforms Commission in two major respects. It does not extend to public servants in the states. Secondly, it does not confine itself to ministers and secretaries alone. In other words, the Bill seeks to provide a statutory machinery to enquire into complaints based on actions of all Union public servants, including ministers.

NEW DELHI;
The 1st May, 1968.

Y. B. CHAVAN.

Notes on clauses

[*Index to abbreviations:*

A.R.C.—Administrative Reforms Commission.

ARC Bill—Bill appended to Interim Report of ARC.

U.K. Act—(United Kingdom) Parliamentary Commissioner **Act**, 1967.

New Zealand Act—(New Zealand) Parliamentary Commissioner (Ombudsman) Act, 1962.]

Clause 1:—

Sub-clause (2) of this clause makes it clear that public servants outside India would also be amenable to the jurisdiction of Lokpal and Lokayuktas.

Clause 2:—

Sub-clause (b).—To distinguish between vigilance cases and grievance cases, a specific definition of allegation has been given. The proposed definition seeks to cover circumstances of political corruption also.

Sub-clause (c).—The definition of “competent authority” is relevant for the purposes of clauses 10 and 12.

Sub-clauses (d) and (g).—The definition of “grievance” has to be read with that of “maladministration” in clause 2 (g). These definitions imply that a grievance cannot be referred to the Lokpal or a Lokayukta unless the complainant *himself* is affected. “Maladministration” has been defined to cover not only a decision but also administrative procedures and practices so that the administrative machinery itself is improved. Section 19(1) of the New Zealand Act may be seen in this connection.

Sub-clause (k).—The definition of “public servant” is self-explanatory.

Clause 3:—

Sub-clauses (1) and (2).—These provide for appointment of Lokpal and Lokayuktas. The method of appointment of a Lokpal is in substance the same as suggested by the ARC in clauses 3(1) and 3(2) of their Bill.

The Lokayukta is to be appointed after consultation with the Lokpal but in the case of appointment of the first Lokayukta no such consultation is necessary.

Sub-clause (4).—It is proposed to have a single administrative office for the Lokpal and the Lokayuktas. A single authority in administrative charge, like the Chief Justice in the Supreme Court or a High Court, will be conducive to smooth functioning of the machinery. It has been made clear in the proviso that the Lokpal cannot operate as a reviewing or appellate authority over the Lokayuktas.

Clause 5:—

Sub-clauses (1) and (2).—These are self-explanatory.

Sub-clause (3).—This corresponds to clause 4(5) of the ARC Bill. The ARC contemplated that the Lokpal will have jurisdiction over the States also and, therefore, put a total embargo on their taking up any office in the States. Since neither the Central Lokpal nor the Central Lokayuktas will have jurisdiction over the States sector, their appointment in a State has been left to be decided by the President on the merits of each case. This will also take into account the contingency of the Central scheme being adopted by some States only.

The ARC Bill is silent on the Lokayuktas. It is proposed that a Lokayukta should be eligible for appointment as Lokpal. The further appointment of Lokpal/Lokayuktas has been barred from such Central sectors as would be within their purview while in office.

Sub-clause (4).—This corresponds to clause 4(6) of the ARC Bill.

Clause 6:—

This clause deals with removal of Lokpal and Lokayuktas. In keeping with the recommendations of the ARC, this clause seeks to ensure that the grounds and procedure for removal are similar to those applicable in the case of Judges of Supreme Court.

Clause 7:—

Sub-clauses (1) and (2).—These correspond to clause 7(1) of the ARC Bill and provide for matters which may be investigated by the Lokpal and Lokayuktas.

Sub-clauses (3) and (4).—These are self-explanatory and are *inter alia* intended to avoid duplication of investigations and ensure proper distribution of work amongst the Lokayuktas.

Clause 8:—

Sub-clause (1) (a).—This corresponds to clause 7(6) of the ARC Bill.

Sub-clause (1) (b).—This corresponds (except for the proviso) to clause 7(2) of the ARC Bill. The proviso is based on section 5(2)—proviso of the U.K. Act.

Sub-clause (2).—There is no such provision in the ARC Bill. This additional provision is necessary so that matters which have already been gone into by a Commission of Inquiry, may not be subjected to another investigation by the Lokpal or the Lokayukta.

Sub-clause (3).—The “public servants” mentioned in clause 2(k) (iv) are strictly not Government servants but have been included in the definition to reflect the present jurisdiction of the Central Vigilance Commission in respect of allegations only. Since the Central Vigilance Commission is not looking into complaints of grievances against them, there is no reason to include these categories of public servants in the grievances sector. There is no corresponding provision in the ARC Bill.

Sub-clause (4).—The time-limit for grievances is that recommended in clause 7(3) of ARC Bill, *viz.*, 12 months, but following section 6(3) of U.K. Act it has been provided that the period shall be computed from the date of knowledge of action and not from the date of occurrence.

The period of limitation for allegations of corruption has been fixed as five years from the date of occurrence and not one year to allow for the time elapsing between the date of occurrence and the date of discovery.

In order to provide some relief in really hard cases a provision has been made for relaxation of the time-limit in the case of grievances alone.

Sub-clause (5).—This corresponds to sub-clause (6) (h) of clause 7 of the ARC Bill subject to an important difference. Whereas the ARC proposes this exclusion both for allegations as well as grievances, the proposed Bill uses the exclusion clause to reduce the scope of grievances alone. Most of the corruption cases are related to discretion and such a blanket exclusion provision may provide undue protection to corrupt public servants.

Clause 9:—

Sub-clause (1).—This corresponds to clause 7(1) (a) of the ARC Bill. Whereas the ARC contemplates that allegations can be made

by any person, the proposed Bill debars public servants from making allegations. This seems to be necessary in order to maintain the discipline of administrative organisation in a sound state.

The proviso to the sub-clause is modelled on section 6(2) of the U.K. Act and seems to be necessary.

Sub-clauses (2) and (3).--There are no similar provisions in the ARC Bill but the need for these is self-evident.

Clause 10:—

Sub-clause (1).--This corresponds to clause 8(1) of the ARC Bill. Unlike the ARC clause, this sub-clause seeks to provide that when the Lokpal or a Lokayukta decides to conduct an investigation against a public servant the competent authority in respect of such public servant should also be informed of the matter.

Sub-clause (2).--This corresponds to clause 8(2) of the ARC Bill. An additional provision is also made to the effect that the identity of the complainant and the public servant concerned should not be disclosed to the public or the press at any time. This is to maintain morale in the public services.

Sub-clause (6).--There is no similar provision in the ARC Bill. This provision which is modelled to some extent on section 7(4) of the U.K. Act, is necessary to ensure that administrative action connected with the matter under investigation by the Lokpal or the Lokayukta should not come to a standstill.

Clause 11:—

Sub-clause (1).--This corresponds to clause 9(1) of the ARC Bill.

Sub-clause (2).--This corresponds to clause 9(2) of the ARC Bill except that items (e) and (f) which are based on similar provisions in section 4 of the Commissions of Inquiry Act, 1952, are new.

Sub-clause (3).--There is no similar provision in the ARC Bill. The clause is modelled on section 5(5) of the Commissions of Inquiry Act, 1952.

Sub-clause (5).--Subject to the following deviations, this corresponds to clause 9(4) of the ARC Bill:—

- (i) Whereas the ARC Bill excludes the discovery of the whole document, the sub-clause excludes only those parts of the

document which attract security considerations. This will enable the Lokpal to obtain non-confidential extracts from confidential documents.

- (ii) Whereas in the ARC Bill, the certificate of secrecy has to be given by the Cabinet Secretary with the approval of the Prime Minister, the draft Bill authorises any Secretary to the Government to issue the certificate. This is in conformity with the administrative practice in our country.

Clause 12:—

Sub-clause (1).—This corresponds to clause 11(3) of the ARC Bill with the only additional feature that the Lokpal/Lokayuktas will, in case of grievances, recommend also the manner in which an injustice should be remedied. Further, the recommendation would go not only to the public servants reported against but the competent authorities also. These additional provisions are necessary so that the public servants and the departments know to what extent the Lokpal/Lokayukta would like the injustice to be redressed.

Sub-clause (2).—There is no such provision in the ARC Bill. This provision is necessary for proper and timely implementation of the recommendations of the Lokpal and the Lokayuktas.

Sub-clauses (3) and (4).—These correspond to clause 11(6) of the ARC Bill.

Sub-clause (5).—This corresponds to clause 11(5) of the ARC Bill. The following deviations from the ARC Bill require special mention:

- (1) Whereas under the ARC Bill special reports have to be laid before the Lok Sabha, under this sub-clause they will be sent to the President who will, under clause 12(8), lay them before each House of Parliament with an explanatory memorandum.
- (2) In order to avoid an awkward situation where the Government may be faced with two contradictory recommendations from the new functionaries and the UPSC who may have been consulted in a case, special reports in such a case have been excluded.

Sub-clause (6).—This corresponds to clause 11(7) of the ARC Bill. The draft Bill provides for one consolidated annual report for all the functionaries.

Sub-clause (7).—There is no corresponding provision in the ARC Bill. The provision is necessary to safeguard public servants who cannot defend themselves before Parliament.

Sub-clause (8).—No such provision is made in the ARC Bill, according to which the Lokpal is to lay his report direct before Parliament. The sub-clause achieves the same result with the improvement that the report will be accompanied by an explanatory memorandum from the Government so that the reports are assessed in the proper light.

Sub-clause (9).—There is no similar provision in the ARC Bill. This is based on the practice in New Zealand where cases of academic interest are reported in the leading law and professional journals.

Clause 13:—

This provides for the staff of Lokpal and Lokayuktas and the machinery required by them for conducting investigations.

Clause 14:—

Sub-clauses (1) and (2).—These sub-clauses correspond to clauses 12(2) and 12(3) of the ARC Bill and protect the secrecy of the information obtained by these functionaries and their staff. Sub-clause (1) protects information available not only to these functionaries and their employees but other public servants also who might have obtained or come by any information collected by these functionaries in the course of any investigation with which these public servants might have been connected.

Sub-clause (3).—This corresponds to clause 12(4) of the ARC Bill except that instead of a Minister, any officer or prescribed authority can in writing communicate the opinion of the Central Government to the effect that the information or document should not be disclosed. This is in accordance with the administrative practice in our country.

Sub-clause (5) of clause 14 and clause 15.—These correspond to clause 12(6) and 10 of the ARC Bill respectively. The Lokpal and Lokayuktas do not qualify as courts as they are only fact-finding agencies. As such, it will not be permissible under article 19 of the Constitution to provide for contempt of these functionaries. A similar question was considered by the Law Commission with reference to Commissions of Inquiry under the Commissions of Inquiry Act, 1952 and the Law Commission had recommended that specific

offences might be created making certain acts in the nature of contempt punishable.

Clause 16:—

Sub-clause (2).—There is no such provision in the ARC Bill. The provision is based on section 21 of the New Zealand Act.

Clause 17:—

Sub-clauses (1) and (2).—There are no similar provisions in the ARC Bill. These sub-clauses will enable the President, by notification or order to transfer various quasi-administrative consultative and supervisory functions currently discharged by the Central Vigilance Commission and the Commissioner for Public Grievances to the new functionaries.

Sub-clause (3).—There is no such provision in the ARC Bill. This will enable the Government to refer important cases to the Lokpal for investigation and report.

Clause 18:—

There is no similar provision in the ARC Bill. The proposed clause is modelled on section 3(2) of the U.K. Act and is necessary to enable the new functionaries to delegate routine functions of investigation, etc., to the staff under them.

Clause 19:—

There is no similar provision in the ARC Bill. This clause empowers the President to make rules under the Act.

Second Schedule, item (f).—This corresponds to item (f) of clause 7(6) of the ARC Bill with the difference that the term "other personnel matters" referred to in that item has been amplified. Further, complaints regarding pension, gratuity and other benefits which arise after retirement, removal or dismissal have not been excluded from the purview of these functionaries.

FINANCIAL MEMORANDUM

Clause 3(1) of the Bill provides for the appointment of a person to be known as the Lokpal and one or more persons to be known as the Lokayukta or Lokayuktas. Clause 5 (4) of the Bill also envisages that the salaries, allowances and other conditions of service of the Lokpal and the Lokayuktas shall be such as may be prescribed. It, however, provides that in prescribing salaries, allowances and other conditions of service of the Lokpal and the Lokayuktas regard shall be had to the salaries, allowances and other conditions of service of the Chief Justice of India and a Judge of the Supreme Court, respectively. Clause 13 provides for the appointment of staff of the Lokpal and the Lokayuktas. The salaries and other conditions of service of the staff of the Lokpal and Lokayuktas are to be prescribed by rules after consultation with the Lokpal. It is thus not possible to give precise details of the expenditure involved. The new institution are, however, estimated to entail a non-recurring expenditure of Rs. 1 lakh and recurring expenditure of Rs. 9 lakhs a year.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 19 of the Bill empowers the Central Government to make rules for the purpose of carrying into effect the provisions of the proposed enactment. The various matters in relation to which such rules may be made have been detailed in the various items of sub-clause 2 of that clause and relate mainly to the salaries, allowances and conditions of service of the Lokpal and the Lokayuktas, the procedure to be followed in making complaints, the powers of a civil court which may be exercised by the Loqpal and the Lokayuktas, etc. These are matters necessary for the effective administration of the provisions of the Bill and it is difficult to provide for all situations in the Bill itself. The delegation of legislative power is therefore of a normal character.

BILL NO. 42 OF 1968

A Bill to provide for the constitution and regulation of an Armed Force of the Union for ensuring the security of the borders of India and for matters connected therewith.

Be it enacted by Parliament in the Nineteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5** 1. (1) This Act may be called the Border Security Force Act, 1968. Short title
title
and
commen-
cement.
(2) It shall come into force on such date as the Central Govern-
ment may, by notification in the Official Gazette, appoint.

Defini-
tions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "active duty", in relation to a person subject to this Act, means any duty as a member of the Force during the period in which such person is attached to, or forms part of, a unit of the Force—
5

(i) which is engaged in operations against an enemy, or

(ii) which is operating at a picket or engaged on patrol or other guard duty along the borders of India, and includes duty by such person during any period declared by the Central Government by notification in the Official Gazette 10 as a period of active duty with reference to any area in which any person or class of persons subject to this Act may be serving;

(b) "battalion" means a unit of the Force constituted as a battalion by the Central Government;
15

(c) "Chief Law Officer" and "Law Officer" mean, respectively, the Chief Law Officer and a Law Officer of the Force appointed by the Central Government;

(d) "civil offence" means an offence which is triable by a criminal court;
20

(e) "civil prison" means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894, or
under any other law for the time being in force;
9 of 1894.

(f) "Commandant", when used in any provision of this Act with reference to any unit of the Force, means the officer whose 25 duty it is under the rules to discharge with respect to that unit, the functions of a Commandant in regard to matters of the description referred to in that provision;

(g) "criminal court" means a court of ordinary criminal justice in any part of India;
30

(h) "Deputy Inspector-General" means a Deputy Inspector-General of the Force appointed under section 5;

(i) "Director-General" means the Director-General of the Force appointed under section 5;

(j) "enemy" includes all armed mutineers, armed rebels, 35 armed rioters, pirates and any person in arms against whom it is the duty of any person subject to this Act to take action;

(k) "enrolled person" means an under-officer or other person enrolled under this Act;

- (l) "Force" means the Border Security Force;
- (m) "Force custody" means the arrest or confinement of a member of the Force according to rules;
- 5 (n) "Inspector-General" means the Inspector-General of the Force appointed under section 5;
- (o) "member of the Force" means an officer, a subordinate officer, an under-officer or other enrolled person;
- (p) "notification" means a notification published in the Official Gazette;
- 10 (q) "offence" means any act or omission punishable under this Act and includes a civil offence;
- (r) "officer" means a person appointed or in pay as an officer of the Force, but does not include a subordinate officer or an under-officer;
- 15 (s) "prescribed" means prescribed by rules made under this Act;
- (t) "rule" means a rule made under this Act;
- (u) "Security Force Court" means a Court referred to in section 64;
- 20 (v) "subordinate officer" means a person appointed or in pay as a Subedar-Major, a Subedar or a Sub-Inspector of the Force;
- 25 (w) "superior officer", when used in relation to a person subject to this Act, means an officer of higher rank or class, or of a higher grade in the same class and includes, when such person is not an officer, a subordinate officer or an under-officer of higher rank, class or grade;
- (x) "under-officer" means a Head Constable, Naik and Lance Naik of the Force;
- 30 (y) all words and expressions used and not defined in this Act but defined in the Indian Penal Code shall have the mean- 45 of 1860 ings assigned to them in that Code.
- (2) In this Act, references to any law not in force in the State of Jammu and Kashmir shall be construed as references to the corresponding law in force in that State.

Persons
subject
to this
Act.

3. (1) The following persons shall be subject to this Act, wherever they may be, namely:—

- (a) officers and subordinate officers; and
- (b) under-officers and other persons enrolled under this ⁵ Act.

(2) Every person subject to this Act shall remain so subject until retired, discharged, released, removed or dismissed from the Force in accordance with the provisions of this Act and the rules.

CHAPTER II

CONSTITUTION OF THE FORCE AND CONDITIONS OF SERVICE OF THE ¹⁰ MEMBERS OF THE FORCE

Constitu-
tion
of the
Force.

4. (1) There shall be an armed force of the Union called the Border Security Force for ensuring the security of the borders of India.

(2) Subject to the provisions of this Act, the Force shall be constituted in such manner as may be prescribed and the conditions of ¹⁵ service of the members of the Force shall be such as may be prescribed.

Control,
direction,
etc.

5. (1) The general superintendence, direction and control of the Force shall vest in, and be exercised by, the Central Government and subject thereto and to the provisions of this Act and the rules, ²⁰ the command and supervision of the Force shall vest in an officer to be appointed by the Central Government as the Director-General of the Force.

(2) The Director-General shall, in discharge of his duties under this Act, be assisted by such number of Inspectors-General, Deputy ²⁵ Inspectors-General, Commandants and other officers as may be appointed by the Central Government.

Enrolment.

6. (1) The persons to be enrolled to the Force, the mode of enrolment, and the procedure for enrolment shall be such as may be prescribed by the Central Government.

³⁰

(2) Notwithstanding anything contained in this Act and the rules, every person who has, for a continuous period of three months, been in receipt of pay as a person enrolled under this Act and borne on the rolls of the Force shall be deemed to have been duly enrolled.

7. Every member of the Force shall be liable to serve in any part of India as well as outside India.

Liability
for
service
outside
India.

8. No member of the Force shall be at liberty—

5 (a) to resign his appointment during the term of his engagement; or

(b) to withdraw himself from all or any of the duties of his appointment,

except with the previous permission in writing of the prescribed authority.

10 9. Every person subject to this Act shall hold office during the pleasure of the President.

Tenure
of service
under the
Act.

10 10. Subject to the provisions of this Act and the rules, the Central Government may dismiss or remove from the service any person subject to this Act.

Termina-
tion of
service by
Central
Govern-
ment.

15 11. (1) The Director-General or any Inspector-General may dismiss or remove from the service or reduce to a lower grade or rank or the ranks any person subject to this Act other than an officer.

Dismissal,
removal
or reduc-
tion by
the
Director-
General
and by
other
officers.

20 (2) An officer not below the rank of Deputy Inspector-General or any prescribed officer may dismiss or remove from the service any person under his command other than an officer or a subordinate officer of such rank or ranks as may be prescribed.

25 (3) Any such officer as is mentioned in sub-section (2) may reduce to a lower grade or rank or the ranks any person under his command except an officer or a subordinate officer.

(4) The exercise of any power under this section shall be subject to the provisions of this Act and the rules.

30 12. A subordinate officer, or an under-officer or other enrolled person who is retired, discharged, released, removed or dismissed from the service shall be furnished by the officer, to whose command he is subject, with a certificate in the language which is the mother tongue of such person and also in Hindi or English language setting forth—

Certifi-
cate of
termina-
tion of
service.

(a) the authority terminating his service;

35 (b) the cause for such termination; and

(c) the full period of his service in the Force.

Restrictions respecting right to form association, freedom of speech, etc.

13. (1) No person subject to this Act shall, without the previous sanction in writing of the Central Government or of the prescribed authority,—

(a) be a member of, or be associated in any way with, any trade union, labour union, political association or with any class 5 of trade unions, labour unions or political associations; or

(b) be a member of, or be associated in any way with, any society, institution, association or organisation that is not recognised as part of the Force or is not of a purely social, recreational or religious nature; or

(c) communicate with the press or publish or cause to be published any book, letter or other document except where such communication or publication is in the bona fide discharge of his duties or is of a purely literary, artistic or scientific character or is of a prescribed nature.

10

15

Explanation.—If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under clause (b) of this sub-section, the decision of the Central Government thereon shall be final.

(2) No person subject to this Act shall participate in, or address, 20 any meeting or take part in any demonstration organised by any body of persons for any political purposes or for such other purposes as may be prescribed.

CHAPTER III

OFFENCES

25

Offences in relation to the enemy and punishable with death.

14. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) shamefully abandons or delivers up any post, place or guard, committed to his charge or which it is his duty to defend; or

30

(b) intentionally uses any means to compel or induce any person subject to this Act or to military, naval or air force law to abstain from acting against the enemy or to discourage such person from acting against the enemy; or

(c) in the presence of the enemy, shamefully casts away 35 his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or

- (d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or
- 5 (e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies or in any other manner whatsoever; or
- 10 (f) in time of active operation against the enemy, intentionally occasions a false alarm in action, camp, quarters, or spreads or causes to be spread reports calculated to create alarm or despondency; or
- 15 (g) in time of action leaves his Commandant or other superior officer or his post, guard, picket, patrol or party without being regularly relieved or without leave; or
- 15 (h) having been captured by the enemy or made a prisoner of war, voluntarily serves with or aids the enemy; or
- 15 (i) knowingly harbours or protects an enemy not being a prisoner; or
- 15 (j) being a sentry in time of active operation against the enemy or alarm, sleeps upon his post or is intoxicated; or
- 20 (k) knowingly does any act calculated to imperil the success of the Force or the military, naval or air forces of India or any forces co-operating therewith or any part of such forces, shall, on conviction by a Security Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.
- 25 15. Any person subject to this Act who commits any of the following offences, that is to say,—
- 30 (a) is taken prisoner or captured by the enemy, by want of due precaution or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner or so captured fails to rejoin his service when able to do so; or
- 35 (b) without due authority holds correspondence with, or communicates intelligence to, the enemy or any person in league with the enemy or having come by the knowledge of any such correspondence or communication, wilfully omits to discover it immediately to his Commandant or other superior officer,
- shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

Offences
in relation to
the
enemy
and not
punishable
with
death.

Offences
punish-
able
more
severely
on ac-
tive
duty
than at
other
times.

16. Any person subject to this Act who commits any of the following offences, that is to say,—
- (a) forces a safeguard, or forces or uses criminal force to a sentry; or
 - (b) breaks into any house or other place in search of plunder; or
 - (c) being a sentry sleeps upon his post, or is intoxicated; or
 - (d) without orders from his superior officer leaves his guard, picket, patrol or post; or
 - (e) intentionally or through neglect occasions a false alarm in camp or quarters or spreads or causes to be spread reports calculated to create unnecessary alarm or despondency; or
 - (f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received,

shall, on conviction by a Security Force Court,—

- (A) if he commits any such offence when on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and
- (B) if he commits any such offence when not on active duty, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

Mutiny.

17. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air forces of India or any forces co-operating therewith; or
- (b) joins in any such mutiny; or
- (c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or
- (d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commandant or other superior officer; or

(e) endeavours to seduce any person in the Force or in the military, naval or air forces of India or any forces co-operating therewith from his duty or allegiance to the Union,

shall, on conviction by a Security Force Court, be liable to suffer
5 death or such less punishment as is in this Act mentioned.

18. (1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by a Security Force Court,—

Desertion
and
aiding
desertion.

10 (a) if he commits the offence when on active duty or when under orders for active duty, be liable to suffer death or such less punishment as is in this Act mentioned; and

15 (b) if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who knowingly harbours any such deserter shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

20 (3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by a Security Force Court,
25 be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

19. Any person subject to this Act who commits any of the following offences, that is to say,—

Absence
without
leave.

(a) absents himself without leave; or

30 (b) without sufficient cause overstays leave granted to him; or

35 (c) being on leave of absence and having received information from the appropriate authority that any battalion or part thereof or any other unit of the Force, to which he belongs, has been ordered on active duty, fails, without sufficient cause, to rejoin without delay; or

(d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or

(e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or

(f) when in camp or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or

(g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

**Striking or threatening
superior officers.** 20. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer;

shall, on conviction by a Security Force Court,—

(A) if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(B) in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

Disobedience to superior officer. 21. (1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or by signal or otherwise, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall, on conviction by a Security Force Court,—

5 (a) if he commits such offence when on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

10 (b) if he commits such offence when not on active duty, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

22. Any person subject to this Act who commits any of the following offences, that is to say,—

15 (a) being concerned in any quarrel, affray or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or

20 (b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or

(c) resists an escort whose duty it is to apprehend him or to have him in charge; or

(d) breaks out of barracks, camp or quarters; or

(e) neglects to obey any general, local or other order; or

25 (f) impedes the Force Police referred to in section 63 or any person lawfully acting on his behalf, or when called upon, refuses to assist in the execution of his duty a Force Police or any person lawfully acting on his behalf,

30 shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clauses (d) and (e), to two years, and in the case of the offences specified in the other clauses, to ten years, or in either case such less punishment as is in this Act mentioned.

23. Any person having become subject to this Act who is dis-
35 covered to have made at the time of enrolment a wilfully false answer
answer to any question set forth in the prescribed form of enrol-
ment which has been put to him by the enrolling officer before

Insubordi-
nation
and
obstruk-
tion.

Fals-
on en-
rolment.

whom he appears for the purpose of being enrolled, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

Certain forms of disgraceful conduct.

24. Any person subject to this Act who commits any of the following offences, that is to say,—⁵

- (a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or
- (b) malingers, or feigns, or produces disease or infirmity in himself or intentionally delays his cure or aggravates his disease or infirmity; or
- (c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that person,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.¹⁵

Ill-treating a subordinate.

25. Any officer, subordinate officer or under-officer, who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.²⁰

Intoxication.

26. Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to six months or such less punishment as is in this Act mentioned.²⁵

Permitting escape of person in custody.

27. Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) when in command of a guard, picket, patrol or post, releases without proper authority, whether wilfully or without reasonable excuse, any person committed to his charge, or refuses to receive any prisoner or person so committed; or³⁰
- (b) wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard,³⁵

shall, on conviction by a Security Force Court, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act men-

tioned; and if he has not acted wilfully, to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

28. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or

(b) having committed a person to Force custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within forty-eight hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to one year or such less punishment as is in this Act mentioned.

29. Any person subject to this Act who, being in lawful custody, escapes or attempts to escape, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

30. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits theft of any property belonging to the Government, or to any Force mess, band or institution, or to any person subject to this Act; or

(b) dishonestly misappropriates or converts to his own use any such property; or

(c) commits criminal breach of trust in respect of any such property; or

(d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or

(e) wilfully destroys or injures any property of the Government entrusted to him; or

(f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person,

Irregularity
in connection
with arrest
or confinement.

Offences
in respect of
property

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Extortion
and cor-
ruption.

31. Any person subject to this Act who commits any of the following offences, that is to say,—

5

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Making
away with
equip-
ment.

32. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, 15 clothing or any other thing being the property of the Govrnm-
ent issued to him for his use or entrusted to him; or

(b) loses by neglect anything mentioned in clause (a); or

(c) sells, pawns, destroys or defaces any medal or decora-
tion granted to him,

20

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clause (a), to ten years, and in the case of the offences specified in the other clauses, to five years, or in either case such less punishment as is in this Act mentioned.

25

Injury
to pro-
perty.

33. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) destroys or injures any property mentioned in clause

(a) of section 32, or any property belonging to any Force mess,
band or institution, or to any person subject to this Act; or

30

(b) commits any act which causes damage to, or destruction of, any property of the Government by fire; or

(c) kills, injures, makes away with, ill-treats or loses any,
animal entrusted to him,

shall, on conviction by a Security Force Court, be liable, if he has 35
acted wilfully, to suffer imprisonment for a term which may extend

to ten years or such less punishment as is in this Act mentioned; and if he has acted without reasonable excuse, to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

5 34. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes a false accusation against any person subject to this Act, knowing or having reason to believe such accusation to be false; or

10 (b) in making a complaint against any person subject to this Act makes any statement affecting the character of such person, knowing or having reason to believe such statement to be false, or knowingly and wilfully suppresses any material facts,

15 shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

35. Any person subject to this Act who commits any of the following offences, that is to say,—

20 (a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(b) in any document of the description mentioned in clause 25 (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

30 (d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement,

40 shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extent to ten years or such less punishment as is in this Act mentioned.

False accusations.

Falsifying official documents and false declarations.

Signing
in blank
and
failure
to report.

36. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when signing any document relating to pay, arms, ammunition, equipment, clothing, supplies or stores, or any property of the Government fraudulently leaves in blank any material part for which his signature is a voucher; or

(b) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years ¹⁰ or such less punishment as is in this Act mentioned.

Offences
relating
to Secu-
rity
Force
Court.

37. Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being duly summoned or ordered to attend as a witness before a Security Force Court, wilfully or without reasonable excuse, makes default in attending; or

(b) refuses to take an oath or make an affirmation legally required by a Security Force Court to be taken or made; or

(c) refuses to produce or deliver any document in his power or control legally required by a Security Force Court ²⁰ to be produced or delivered by him; or

(d) refuses, when a witness, to answer any question which he is by law bound to answer; or

(e) is guilty of contempt of the Security Force Court by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court, ²⁵

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

False
evidence.

38. Any person subject to this Act who, having been duly sworn ³⁰ or affirmed before any Security Force Court or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend ³⁵ to seven years or such less punishment as is in this Act mentioned.

Unlawful
detention
of pay.

39. Any officer, subordinate officer or an under-officer who, having received the pay of a person subject to this Act unlawfully detains or refuses to pay the same when due, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may ⁴⁰

extend to five years or such less punishment as is in this Act mentioned.

40. Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline of the Force shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

41. Any person subject to this Act who commits any of the following offences, that is to say,—

Miscellaneous offences.

(a) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(b) by defiling any place of worship, or otherwise, intentionally insults the religion, or wounds the religious feelings of, any person; or

(c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or

(d) being below the rank of subordinate officer, when off duty, appears without proper authority, in or about camp, or in or about, or when going to, or returning from, any town or bazaar, carrying a rifle, sword or other offensive weapon; or

(e) directly or indirectly accepts or obtains, or agrees to accept, or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or

(f) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving,

shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

42. Any person subject to this Act who attempts to commit any of the offences specified in sections 14 to 41 (both inclusive) and in such attempt does any act towards the commission of the offence

shall, on conviction by a Security Force Court, where no express provision is made by this Act for the punishment of such attempt, be liable,—

(a) if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and 5

(b) if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one-half of the longest term provided for that ¹⁰ offence or such less punishment as is in this Act mentioned.

Abet-
ment of
offences
that have
been
com-
mitted.

43. Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) shall, on conviction by a Security Force Court, if the Act abetted is committed in consequence of the abetment and no express provision ¹⁵ is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

Abet-
ment of
offences
punish-
able
with
death and
not com-
mitted.

44. Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 14, 17 and ²⁰ sub-section (1) of section 18 shall, on conviction by a Security Force Court, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is ²⁵ in this Act mentioned.

Abet-
ment of
offences
punish-
able with
imprison-
ment and
not com-
mitted.

45. Any person subject to this Act who abets the commission of any of the offences specified in sections 14 to 41 (both inclusive) and punishable with imprisonment shall, on conviction by a Security Force Court, if that offence be not committed in consequence of the ³⁰ abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

Civil
offences.

46. Subject to the provisions of section 47, any person subject ³⁵ to this Act who at any place in, or beyond, India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a Security Force Court and, on conviction, be punishable as follows, that is to say.— 40

(a) if the offence is one which would be punishable under any law in force in India with death, he shall be liable to suffer

any punishment, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and

5 (b) in any other case, he shall be liable to suffer any punishment, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.

47. A person subject to this Act who commits an offence of murder or of culpable homicide not amounting to murder against, or of rape in relation to, a person not subject to this Act shall not be deemed 10 to be guilty of an offence against this Act and shall not be tried by a Security Force Court, unless he commits any of the said offences,—

Civil
offences
not tri-
able by
a Secu-
rity Force
Court.

- (a) while on active duty; or
- (b) at any place outside India; or
- (c) at any place specified by the Central Government by 15 notification in this behalf.

CHAPTER IV

PUNISHMENTS

48. (1) Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Security Force Courts according to the scale following, that is to say,—

- (a) death;
- (b) imprisonment which may be for the term of life or any other lesser term but excluding imprisonment for a term not exceeding three months in Force custody;
- (c) dismissal from the service;
- (d) imprisonment for a term not exceeding three months in Force custody;
- (e) reduction to the ranks or to a lower rank or grade or place in the list of their rank in the case of an under-officer;
- (f) forfeiture of seniority of rank and forfeiture of all or any part of the service for the purpose of promotion;
- (g) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;
- (h) fine, in respect of civil offences;
- (i) severe reprimand or reprimand except in the case of 35 persons below the rank of an under-officer;
- (j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active duty;

(k) forfeiture in the case of person sentenced to dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such dismissal;

(l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence for which he is convicted is made good.

(2) Each of the punishments specified in sub-section (1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

Alternative punishments awardable by Security Force Courts.

49. Subject to the provisions of this Act, a Security Force Court may, on convicting a person subject to this Act of any of the offences specified in sections 14 to 45 (both inclusive) award either the particular punishment with which the offence is stated in the said sections to be punishable or, in lieu thereof, any one of the punishments lower in the scale set out in section 48 regard being had to the nature and degree of the offence.

Combination of punishments.

50. A sentence of a Security Force Court may award in addition to, or without any one other punishment, the punishment specified in clause (c) of sub-section (1) of section 48, and any one or more of the punishments specified in clauses (e) to (l) (both inclusive of that sub-section.

Retention in the Force of a person convicted on active duty.

51. When on active duty any enrolled person has been sentenced by a Security Force Court to dismissal or to imprisonment whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and such service shall be reckoned as part of his term of imprisonment if any.

Punishments otherwise than by Security Force Courts.

52. Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a Security Force Court in the manner stated in sections 53 and 55.

Minor punishments.

53. Subject to the provisions of section 54, a Commandant or such other officer as is, with the consent of Central Government, specified by the Director-General may, in the prescribed manner, proceed against a person subject to this Act, otherwise than as an officer or a subordinate officer, who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,—

(a) imprisonment in Force custody up to twenty-eight days;

(b) detention up to twenty-eight days;

- (c) confinement to the lines up to twenty-eight days;
- (d) extra guards or duties;
- (e) deprivation of any special position or special emoluments or any acting rank or reduction to a lower grade of pay;
- 5 (f) forfeiture of good service and good conduct pay;
- (g) severe reprimand or reprimand;
- (h) fine up to fourteen days' pay in any one month;
- (i) deductions from his pay of any sum required to make good such compensation for any expense, loss, damage or destruction caused by him to the Central Government, or to any building or property as may be awarded by his Commandant.

10 54. (1) In the case of an award of two or more of the punishments specified in clauses (a), (b), (c) and (d) of section 53, the punishments specified in clause (c) or clause (d) shall take effect only at the end of the punishment specified in clause (a) or clause (b). Limit of punishments under section 53.

15 (2) When two or more of the punishments specified in the said clauses (a), (b) and (c) are awarded to a person conjointly, or when already undergoing one or more of the said punishments, the whole extent of the punishments shall not exceed in the aggregate forty-
20 two days.

(3) The punishments specified in the said clauses (a), (b) and (c) shall not be awarded to any person who is of the rank of an under-officer or was, at the time of committing the offence for which he is punished, of such rank.

25 (4) The punishment specified in clause (g) of section 53 shall not be awarded to any person below the rank of an under-officer.

30 55. (1) An officer not below the rank of the Deputy Inspector-General or such other officer as is, with the consent of the Central Government, specified by the Director-General may, in the prescribed manner, proceed against a person of or below the rank of a subordinate officer who is charged with an offence under this Act and award one or more of the following punishments, that is to say,— Punishment of persons of and below the rank of subordinate officers by Deputy Inspectors-General and others.

- 35 (a) forfeiture of seniority, or in the case of any of them whose promotion depends upon the length of service forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a Security Force Court;
- (b) severe reprimand or reprimand;

(c) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

(2) In every case in which punishment has been awarded under sub-section (1), certified true copies of the proceedings shall be forwarded, in the prescribed manner, by the officer awarding the punishment to the prescribed superior authority who may, if the punishment awarded appears to him to be illegal, unjust or excessive, cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case. 10 5

Collective fines.

56. (1) Whenever any weapon or part of a weapon, or ammunition, forming part of the equipment of a unit of the Force, is lost or stolen, an officer not below the rank of the Commandant of a battalion may, after making such enquiry as he thinks fit and subject to the rules, impose a collective fine upon the subordinate officers, under-officers and men of such unit, or upon so many of them as, in his judgment, 15 should be held responsible for such loss or theft.

(2) Such fine shall be assessed as a percentage on the pay of the individuals on whom it falls.

CHAPTER V

20

ARREST AND PROCEEDINGS BEFORE TRIAL

Custody of offenders.

57. (1) Any person subject to this Act who is charged with an offence may be taken into Force custody, under the order of any superior officer.

(2) Notwithstanding anything contained in sub-section (1), an 25 officer may order into Force custody any other officer, though such other officer may be of a higher rank, engaged in a quarrel, affray or disorder.

Duty of Commandant in regard to detention

58. (1) It shall be the duty of every Commandant to take care that a person under his command when charged with an offence is 30 not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him to be impracticable having regard to the public service. 35

(2) The case of every person being detained in custody beyond a period of forty-eight hours, and the reasons therefor, shall be reported by the Commandant to the Deputy Inspector-General under whom he is serving or such other officer to whom an application may be made to convene a Security Force Court for the trial of the 40 person charged.

(3) In reckoning the period of forty-eight hours specified in sub-section (1), Sundays and other public holidays shall be excluded.

(4) Subject to the provisions of this Act, the Central Government may make rules providing for the manner in which and the period for which any person subject to this Act may be taken into and detained in Force custody, pending the trial by any competent authority for any offence committed by him.

59. In every case where any such person as is mentioned in section 57 and as is not on active duty, remains in such custody for a longer period than eight days without a Security Force Court for his trial being convened, a special report giving reasons for the delay shall be made by his Commandant in the manner prescribed, and a similar report shall be forwarded at intervals of every eight days until a Security Force Court is convened or such person is released from custody.

Interval
between
committal
and trial.

60. Whenever any person subject to this Act, who is accused of an offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to Force custody of such person upon receipt of a written application to that effect signed by his Commandant or an officer authorised by the Commandant in that behalf.

Arrest by
civil
authori-
ties.

61. (1) Whenever any person subject to this Act deserts, the Commandant of the unit to which he belongs, shall give information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, into Force custody.

Capture of
deserters

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act, and to be a deserter or to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

62. (1) When any person subject to this Act has been absent from duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be appointed by such authority and in such manner as may be prescribed; and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or

Inquiry
into
absence
without
leave.

in any arms, ammunition, equipment, instruments, clothing or necessities; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof and the said deficiency, if any, and the Commandant of the unit to which the person belongs shall make a record thereof in the prescribed manner.

5

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall for the purposes of this Act, be deemed to be a deserter.

Force
police
officers.

63. (1) The Director-General or any prescribed officer may appoint persons (in this Act referred to as Force police) for discharging the functions specified in sub-sections (2) and (3).

10

(2) The duties of a person appointed under sub-section (1), are to take charge of persons confined for any offence, to preserve good order and discipline and to prevent breaches of the same by persons serving in, or attached to, the Force.

15

(3) Notwithstanding anything contained in section 57, a person appointed under sub-section (1) may, at any time, arrest and detain for trial any person subject to this Act who commits, or is charged with, an offence, and may also carry into effect any punishment to be inflicted in pursuance of a sentence awarded by a Security Force Court or by an officer exercising authority under section 53 but shall not inflict any punishment on his own authority.

20

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

25

CHAPTER VI SECURITY FORCE COURTS

Kind of
Security
Force
Courts.

64. For the purposes of this Act there shall be three kinds of Security Force Courts, that is to say,—

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- (a) General Security Force Courts;
- (b) Petty Security Force Courts; and
- (c) Summary Security Force Courts.

Power to
convene
a General
Security
Force
Court.

65. A General Security Force Court may be convened by the Central Government or the Director-General or by any officer empowered in this behalf by warrant of the Director-General.

35

Power to
convene
a Petty
Security
Force
Court.

66. A Petty Security Force Court may be convened by an officer having power to convene a General Security Force Court or by an officer empowered in this behalf by warrant of any such officer.

67. A warrant, issued under section 65 or section 66 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

Contents
of war-
rants
issued
under
sections
65 and 66.

68. A General Security Force Court shall consist of not less than five officers, each of whom has held the post of Deputy Superintendent of Police for not less than three whole years and of whom not less than four are of a rank not below that of a confirmed Deputy Superintendent of Police.

Composi-
tion of
General
Security
Force
Court.

Explanation.—For the purposes of this section and section 69 “Deputy Superintendent of Police” includes any post of a higher rank and any post declared by Central Government by notification to be an equivalent post as also any post higher in rank than the post so declared.

69. A Petty Security Force Court shall consist of not less than three officers each of whom has held the post of Deputy Superintendent of Police for not less than two whole years.

Composi-
tion of
a Petty
Security
Force
Court.

70. (1) A Summary Security Force Court may be held by the Commandant of any unit of the Force and he alone shall constitute the Court.

Summary
Security
Force
Court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or subordinate officers or one of either, and who shall not as such, be sworn or affirmed.

71. (1) If a Security Force Court after the commencement of a trial is reduced below the minimum number of officers required by this Act, it shall be dissolved.

Dissolu-
tion of
a Security
Force
Court.

(2) If, on account of the illness of the Law Officer or of the accused before the finding, it is impossible to continue the trial, a Security Force Court shall be dissolved.

(3) The officer who convened a Security Force Court may dissolve the same if it appears to him that the exigencies of the service or necessities of discipline render it impossible or inexpedient to continue the said Security Force Court.

(4) Where a Security Force Court is dissolved under this section, the accused may be tried again.

Powers
of a
General
Security
Force
Court.

72. A General Security Force Court shall have the power to try any person subject to this Act for any offence punishable thereunder and to pass any sentence authorised thereby.

Powers
of a
Petty
Security
Force
Court.

73. A Petty Security Force Court shall have power to try any person subject to this Act other than an officer or a subordinate officer for any offence made punishable thereunder and to pass any sentence authorised by this Act other than a sentence of death, or imprisonment for a term exceeding two years.

5

Powers
of a
Summary
Security
Force
Court.

74. (1) Subject to the provisions of sub-section (2), a Summary Security Force Court may try any offence punishable under this Act.¹⁰

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a Petty Security Force Court for the trial of the alleged offender, an officer holding a Summary Security Force Court shall not try without such reference any offence punishable under any of the sections 14, 17 and 46 of this Act, or any offence against the officer holding the court.¹⁵

(3) A Summary Security Force Court may try any person subject to this Act and under the command of the officer holding the court, except an officer, or a subordinate officer.²⁰

(4) A Summary Security Force Court may pass any sentence which may be passed under this Act, except the sentence of death or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be,—²⁵

(a) one year, if the officer holding the Security Force Court has held either the post of Superintendent of Police or a post declared by the Central Government by notification to be equivalent thereto, for a period of not less than three years or holds a post of higher rank than either of the said posts; and³⁰

(b) three months, in any other case.

75. (1) When any person subject to this Act has been acquitted or convicted of an offence by a Security Force Court or by a criminal court or has been dealt with under section 53 or under section 55, he shall not be liable to be tried again for the same offence by a Security Force Court or dealt with under the said sections.

(2) When any person, subject to this Act, has been acquitted or convicted of an offence by a Security Force Court or has been dealt with under section 53 or section 55, he shall not be liable to be tried again by a criminal court for the same offence or on the same facts.

10 76. No trial for an offence of desertion, other than desertion on active duty, shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any unit of the Force.

15 77. (1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in Force custody and tried and punished for such offence as if he continued to be so subject.

(2) No such person shall be tried for an offence, unless his trial commences within six months after he had ceased to be subject to this Act:

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of desertion or for any of the offences mentioned in section 17 or shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a Security Force Court.

25 78. (1) When a person subject to this Act is sentenced by a Security Force Court to imprisonment, this Act shall apply to him during the term of his sentence, though he is dismissed from the Force, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(2) When a person subject to this Act is sentenced by a Security Force Court to death, this Act shall apply to him till the sentence is carried out.

Place of trial. 79. Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

Choice between criminal court and Security Force Court. 80. When a criminal court and a Security Force Court have each jurisdiction in respect of an offence, it shall be in the discretion of 5 the Director-General, or the Inspector-General or the Deputy Inspector-General within whose command the accused person is serving or such other officer as may be prescribed, to decide before which court the proceedings shall be instituted, and, if that officer decides that they shall be instituted before a Security Force Court, ¹⁰ to direct that the accused person shall be detained in Force custody.

Power of criminal court to require delivery of offender. 81. (1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 80 at his option, either to deliver over the offender ¹⁵ to the nearest magistrate to be proceeded against according to law, or to postpone proceedings, pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith ²⁰ refer the question as to the court before which the proceedings are to be instituted, for the determination of the Central Government whose order upon such reference shall be final.

CHAPTER VII

PROCEDURE OF SECURITY FORCE COURTS

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Presiding officer. 82. At every General Security Force Court or Petty Security Force Court, the senior member shall be the presiding officer.

Law Officers. 83. Every General Security Force Court shall, and every Petty Security Force Court may, be attended by a Law Officer, or if no such officer is available, an officer approved by the Chief Law Officer, ³⁰ or a Law Officer.

Challenges. 84. (1) At all trials by a General Security Force Court or by a Petty Security Force Court, as soon as the court is assembled, the names, of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being ³⁵ tried by any officer sitting on the court.

(2) If the accused objects to such officer, his objection and also the reply thereto of the officer objected to shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer decide on the objection.

⁵ (3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner, by another officer subject to the same right of the accused to object.

¹⁰ (4) When no challenge is made, or when a challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

¹⁵ 85. (1) An oath or affirmation in the prescribed manner shall be administered to every member of every Security Force Court and to the Law Officer or as the case may be the officer approved under section 83, before the commencement of the trial.

Oaths of
member,
Law Offi-
cer and
witness.

²⁰ (2) Every person giving evidence before a Security Force Court shall be examined after being duly sworn or affirmed in the prescribed form.

²⁵ (3) The provisions of sub-section (2) shall not apply where the witness is a child under twelve years of age and the Security Force Court is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation.

³⁰ 86. (1) Subject to the provisions of sub-sections (2) and (3), every decision of a Security Force Court shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused.

Voting by
members.

(2) No sentence of death shall be passed by a General Security Force Court without the concurrence of at least two thirds of the members of the court.

³⁵ (3) In matters, other than a challenge or the finding or sentence, the presiding officer shall have a casting vote.

General rule as to evidence.

1 of 1872

87. The Indian Evidence Act, 1872, shall, subject to the provisions of this Act, apply to all proceedings before a Security Force Court.

Judicial notice.

88. A Security Force Court may take judicial notice of any matter within the general knowledge of the members as officers of the Force.

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Summoning witnesses.

89. (1) The convening officer, the presiding officer of a Security Force Court, the Law Officer or, as the case may be, the officer approved under section 83 or the Commandant of the accused person may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness who is subject to this Act the summons shall be sent to his Commandant and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be, or resides, and such magistrate shall give effect to the summons as if the witness were required in the court of such a magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

Documents exempted from production.

90. (1) Nothing in section 89 shall be deemed to affect the operation of sections 123 and 124 of the Indian Evidence Act, 1872 or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

1 of 1872

25

(2) If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Sessions, wanted for the purpose of any Security Force Court, such magistrate, or Court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate, or Court may direct.

30

(3) If any such document is, in the opinion of any other magistrate or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause such search to be made for,

35

and to detain such document pending the orders of any such District Magistrate, Chief Presidency Magistrate or High Court or Court of Sessions.

91. (1) Whenever, in the course of a trial by a Security Force Court, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Chief Law Officer in order that a commission to take the evidence of such witness may be issued.

(2) The Chief Law Officer may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) The magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in the trials of warrant-cases under the Code of Criminal Procedure, 1898.

(4) When the witness resides in a tribal area or in any place outside India, the commission may be issued in the manner specified in Chapter XL of the Code of Criminal Procedure, 1898.

92. (1) The prosecutor and the accused person in any case in which a commission is issued under section 91 may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the Magistrate or officer executing the commission shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused person may appear before such Magistrate or officer by counsel or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.

(3) After a commission issued under section 91 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder to the Chief Law Officer.

(4) On receipt of a Commission, and deposition returned under sub-section (3), the Chief Law Officer shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the

of 1898.

5 of 1898.

Commiss-
ions for
examina-
tion of

Examina-
tion of
a witness
on com-
mission.

accused person; and the commission, the return thereto and the deposition shall be open to inspection by the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

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(5) In every case in which a commission is issued under section 91, the trial may be adjourned for specified time reasonably sufficient for the execution and return of the commission.

Conviction
of offence
not charged.

93. (1) A person charged before a Security Force Court with desertion may be found guilty of attempting to desert or of being absent without leave.

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(2) A person charged before a Security Force Court with attempting to desert may be found guilty of being absent without leave.

(3) A person charged before a Security Force Court with using criminal force may be found guilty of assault.

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(4) A person charged before a Security Force Court with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a Security Force Court with any one of the offences specified in clauses (a), (b), (c) and (d) of section 30 may be found guilty of any other of these offences with which he might have been charged.

20

(6) A person charged before a Security Force Court with an offence punishable under section 46 may be found guilty of any other offence of which he might have been found guilty, if the provisions of the Code of Criminal Procedure, 1898, were applicable.

5 of 1898.

(7) A person charged before a Security Force Court with any offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

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(8) A person charged before a Security Force Court with any offence under this Act may be found guilty of having attempted or abetted the commission of that offence, although the attempt or abetment is not separately charged.

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Presump-
tion as to
signatures.

94. In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service of the Government shall, on production, be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

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Enrol-
ment
paper.

95. (1) Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given.

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(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

96. (1) A letter, return or other document respecting the service of any person in, or the dismissal or discharge of any person, from any unit of the Force, or respecting the circumstances of any person not having served in, or belonged to, any unit of the Force, if purporting to be signed by or on behalf of the Central Government or the Director-General, or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

10
(2) A Border Security Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers, subordinate officers therein mentioned, and of any appointment held by them and of the battalion, unit, or branch of the Force to which they belong.

15
(3) Where a record is made in any battalion book in pursuance of this Act or of any rules made thereunder or otherwise in the discharge of official duties, and purports to be signed by the Commandant or by the officer whose duty it is to make such record, such record shall be evidence of the facts therein stated.

20
(4) A copy of any record in any battalion book purporting to be certified to be a true copy by the officer having custody of such book shall be evidence of such record.

25
(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of any officer or other person subject to this Act, or any unit of the Force, or has been apprehended by such officer or person, a certificate purporting to be signed by such officer, or by the Commandant of the unit to which such person belongs, as the case may be, and stating the fact, date and place of such surrender or apprehension, and the manner in which he was dressed shall be evidence of the matters so stated.

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(6) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave and such person has 35 surrendered himself into the custody of, or has been apprehended by, a police officer not below the rank of an officer in charge of a

police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension and the manner in which he was dressed shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report, may be used as evidence in any proceeding under this Act. 5

**Reference
by accused
to Gov-
ernment
Officer.**

97. (1) If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the accused person states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn the proceedings until his reply is received. 10 15

(2) The written reply of any officer so referred to shall, if signed by him, be received in evidence and have the same effect as if made on oath before the court. 20

(3) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial.

**Evidence
of pre-
vious con-
victions
and gene-
ral char-
acter.**

98. (1) When any person subject to this Act has been convicted by a Security Force Court of any offence, such Security Force Court may inquire into, and receive, and record evidence of any previous convictions of such person, either by a Security Force Court or by a criminal court, or any previous award of punishment under section 53 or 55, and may further inquire into and record the general character of such person and such other matters as may be prescribed. 25 30

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, books of Security Force Courts or other official records; and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received. 35

(3) At a Summary Security Force Court, the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may 40

be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

99. (1) Whenever, in the course of a trial by a Security Force Court, it appears to the court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the court shall record a finding accordingly.

10 (2) The presiding officer of the court, or, in the case of a Summary Security Force Court, the officer holding the trial, shall forthwith report the case to the confirming officer, or to the authority empowered to deal with its finding under section 115, as the case may be.

15 (3) The confirming officer to whom the case is reported under sub-section (2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another Security Force Court for the offence with which he was charged.

(4) The authority to whom the finding of a Summary Security Force Court is reported under sub-section (2), and a confirming officer confirming the finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Central Government.

25 (5) On receipt of a report under sub-section (4), the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

100. Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under section 99, any officer prescribed in this behalf, may—

(a) if such person is in custody under sub-section (4) of section 99, on the report of a medical officer that he is capable of making his defence, or

35 (b) if such person is detained in a jail under sub-section (5) of section 99, on a certificate of the Inspector General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section, on a certificate of any two or more of the visitors of such asylum and if he is detained in any other place under that sub-section, on a certificate of the prescribed autho-

rity, that he is capable of making his defence, take steps to have such person tried by the same or another Security Force Court for the offence with which he was originally charged or, if the offence is a civil offence, by a criminal court.

Transmis-
sion to
Central
Govern-
ment of
orders
under sec-
tion 100.

Release of
lunatic
accused.

Delivery
of lunatic
accused to
relatives.

Order for
custody
and dis-
posal of
property
pending
trial.

101. A copy of every order made by an officer under section 100 for the trial of the accused shall forthwith be sent to the Central Government. 5

102. Where any person is in custody under sub-section (4) of section 99 or under detention under sub-section (5) of that section,—

(a) if such person is in custody under the said sub-section 10 (4), on the report of a medical officer, or

(b) if such person is detained under the said sub-section 15 (5), on a certificate from any of the authorities mentioned in clause (b) of section 100 that in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person.

the Central Government may order that such person be released or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

103. Where any relative or friend of any person who is in custody 20 under sub-section (4) of section 99 or under detention under sub-section (5) of that section desires that he should be delivered to his care and custody, the Central Government may, upon application by such relative or friend and, on his giving security to the satisfaction of that Government that the person delivered shall be 25 properly taken care of, and, prevented from doing injury to himself or to any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend. 30

104. When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a Security Force Court during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of 35 the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

105. (1) After the conclusion of a trial before any Security Force Court, the court or the officer confirming the finding or sentence of such Security Force Court, or any authority superior to such officer, or, in the case of a Summary Security Force Court whose finding or sentence does not require confirmation, an officer not below the rank of Deputy Inspector-General within whose command the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1898.

(3) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

106. Any trial by a Security Force Court under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Security Force Court shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

Order
for dis-
posal of
property
regarding
which
offence
is Com-
mitted.

35

CHAPTER VIII

CONFIRMATION AND REVISION

107. No finding or sentence of a General Security Force Court or a Petty Security Force Court shall be valid except so far as it may be confirmed as provided by this Act.

Powers of
Security
Force
Court in
relation
to pro-
ceedings
under this
Act.

Finding
and sen-
tence not
valid, un-
less con-
firmed.

Power to confirm finding and sentence of General Security Force Court.

Power to confirm finding and sentence of Petty Security Force Court.

Limitation of powers of confirming authority.

Power of confirming authority to mitigate, remit or commute sentences.

Confirming of findings and sentences on board a ship.

Revision of finding or sentence.

108. The findings and sentences of General Security Force Courts may be confirmed by the Central Government or by any officer empowered in this behalf by warrant of the Central Government.

109. The findings and sentences of Petty Security Force Courts may be confirmed by an officer having power to convene a General Security Force Court or by any officer empowered in this behalf by warrant of such officer.

110. A warrant issued under section 108 or section 109 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

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111. (1) Subject to such restrictions, reservations or conditions, as may be contained in any warrant issued under section 108 or section 109, a confirming authority may, when confirming the sentence of a Security Force Court, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 48.

112. When any person subject to this Act is tried and sentenced by a Security Force Court while on board a ship, the finding and sentence so far as not confirmed and executed on board the ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

113. (1) Any finding or sentence of a Security Force Court which requires confirmation may be once revised by order of the confirming authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence.

25

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a General Security Force Court, it still consists of five officers, or, if a Petty Security Force Court, of three officers.

30

114. (1) Save as otherwise provided in sub-section (2), the finding and sentence of a Summary Security Force Court shall not require to be confirmed, but may be carried out forthwith.

(2) If the officer holding the trial is of the rank of Superintendent of Police or of a rank declared under clause (a) of sub-section 5 of section 74 as equivalent thereto or of a lower rank and has held such rank for less than five years, he shall not, except on active duty, carry into effect any sentence, until it has received the approval of an officer not below the rank of Deputy Inspector-General.

115. The proceedings of every Summary Security Force Court shall, without delay, be forwarded to the officer not below the rank of Deputy Inspector-General within whose command the trial was held, or to the prescribed officer, and such officer, or the Director-General or any officer empowered by him in this behalf may, for 15 reasons based on the merits of the case, but not on merely technical grounds, set aside the proceedings, or reduce the sentence to any other sentence which the court might have passed.

116. (1) Where a finding of guilty by a Security Force Court, which has been confirmed or which does not require confirmation, 20 is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 128 to commute the punishment awarded by the sentence, if the finding had been valid may substitute a new finding and pass a sentence for the offence specified or involved in such finding:

25 Provided that no such substitution shall be made unless such finding could have been validly made by the Security Force Court on the charge and unless it appears that the Security Force Court must have been satisfied of the facts establishing the said offence.

(2) Where a sentence passed by a Security Force Court which 30 has been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority referred to in sub-section (1) may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by, the sentence for which a new sentence is substituted under this section.

(4) Any finding substituted, or any sentence passed, under this section shall, for the purposes of this Act and the rules, have effect 40 as if it were a finding or sentence, as the case may be, of a Security Force Court.

Finding
and sen-
tence of a
Summary
Security
Force
Court.

Trans-
mission of
proceed-
ings of
Summary
Security
Force
Courts.

Alter-
ation of
finding or
sentence
in certain
cases.

Remedy against order, finding or sentence of Security Force Court.

117. (1) Any person subject to this Act who considers himself aggrieved by any order passed by any Security Force Court may present a petition to the officer or authority empowered to confirm any finding or sentence of such Security Force Court, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any Security Force Court ¹⁰ which has been confirmed, may present a petition to the Central Government, the Director-General, or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Director-General, or the prescribed officer, as the case may be, may pass such order thereon as it or ¹⁵ he thinks fit.

Annulment of proceedings.

118. The Central Government, the Director-General, or any prescribed officer may annul the proceedings of any Security Force Court on the ground that they are illegal or unjust.

CHAPTER IX

20

EXECUTION OF SENTENCE, PARDONS, REMISSIONS, ETC.

Form of sentence of death.

119. In awarding a sentence of death, a Security Force Court shall, in its discretion direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

25

120. Whenever any person is sentenced by a Security Force Court under this Act to imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the presiding officer, or in the case of a Summary Security Force Court, by the court.

Com-mence-
ment
of sen-
tence of
imprison-
ment.

121. (1) Whenever any sentence of imprisonment is passed under this Act by a Security Force Court or whenever any sentence of death is commuted to imprisonment, the confirming officer or in the case of a Summary Security Force Court the officer holding the court or such other officer as may be prescribed shall, save as otherwise provided in sub-sections (3) and (4) direct that the sentence shall be carried out by confinement in a civil prison.

Execution
of sen-
tence of
imprison-
ment.

(2) When a direction has been made under sub-section (1) the Commandant of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a Security Force Court, the appropriate officer under sub-section (1) may direct that the sentence shall be carried out by confinement in Force custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the Deputy Inspector-General within whose command the person sentenced is serving or any prescribed officer, may from time to time appoint.

122. Where a sentence of imprisonment is directed to be undergone in a civil prison the offender may be kept in Force custody or in any other fit place, till such time as it is possible to send him to a civil prison.

Tempo-
rary cus-
tody of
offender.

Execution
of sen-
tence of
imprison-
ment in
special
cases.

123. Whenever, in the opinion of an officer not below the rank of Deputy Inspector-General within whose command the trial is held, any sentence or portion of a sentence of imprisonment cannot for special reasons, conveniently be carried out in Force custody in accordance with the provisions of section 121 such officer may ⁵ direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

Conve-
yance of
prisoner
from place
to place.

124. A person under sentence of imprisonment may during his conveyance from place to place, or when on board ship, aircraft, or otherwise, be subjected to such restraint as is necessary for his ¹⁰ safe conduct and removal.

Communi-
cation of
certain
orders to
prison
officers.

125. Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the officer making the order or his staff ¹⁵ officer or such other person as may be prescribed, to the officer in charge of the prison in which such person is confined.

Execution
of sen-
tence of
fine.

126. When a sentence of fine is imposed by a Security Force Court under section 46, a copy of such sentence signed and certified by the confirming officer, or where no confirmation is required, by ²⁰ the officer holding the trial may be sent to any magistrate in India, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898, as if it were a sentence of fine imposed by such magistrate.

25 5 of 1898.

Informa-
lity or
error in
the order
warrant.

127. Whenever any person is sentenced to imprisonment under this Act, and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of informality or error in, or as respects, the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into, or, is confined in any such place, and any such order, warrant or document may be amended accordingly.

Padon
and re-
mission.

128. When any person subject to this Act has been convicted by ³⁵ a Security Force Court of any offence, the Central Government or the Director-General or, in the case of a sentence, which he could have confirmed or which did not require confirmation, an officer not below the rank of Deputy Inspector-General within whose command such person at the time of conviction was serving, or the prescribed officer may,—

- (a) either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded; or
- (b) mitigate the punishment awarded; or
- 5 (c) commute such punishment for any less punishment or punishments mentioned in this Act;
- (d) either with or without conditions which the person sentenced accepts, release the person on parole.

129. (1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

130. (1) Where a person subject to this Act is sentenced by a Security Force Court to imprisonment, the Central Government, the Director-General or any officer empowered to convene a General Security Force Court may suspend the sentence whether or not the offender has already been committed to prison or to Force custody.

(2) The authority or officer specified in sub-section (1) may, in the case of an offender so sentenced, direct that until the orders of such authority or officer have been obtained, the offender shall not be committed to prison or to Force custody.

(3) The powers conferred by sub-sections (1) and (2) may be exercised in the case of any such sentence which has been confirmed, reduced or commuted.

131. (1) Where the sentence referred to in section 130 is imposed by a Security Force Court other than a Summary Security Force Court, the confirming officer may, when confirming the sentence, Orders pending suspension.

direct that the offender be not committed to prison or to Force custody until the orders of the authority or officer specified in section 130, have been obtained.

(2) Where a sentence of imprisonment is imposed by a Summary Security Force Court, the officer holding the trial or the officer authorised to approve of the sentence under sub-section (2) of section 114 may make the direction referred to in sub-section (1).

Release
on sus-
pension.

132. Where a sentence is suspended under section 130, the offender shall forthwith be released from custody.

Computa-
tion of
period of
suspen-
sion.

133. Any period during which the sentence is under suspension shall be reckoned as part of the term of such sentence.

Order
after sus-
pension.

134. The authority or officer specified in section 130 may, at any time while a sentence is suspended, order—

(a) that the offender be committed to undergo the unexpired portion of the sentence; or 15

(b) that the sentence be remitted.

Reconsi-
deration of
case after
suspen-
sion.

135. (1) Where a sentence has been suspended, the case may at any time, and shall at intervals of not more than four months, be reconsidered by the authority or officer specified in section 130, or by any officer not below the rank of a Deputy Inspector-General duly authorised by the authority or officer specified in section 130. 20

(2) Where on such reconsideration by the officer so authorised it appears to him that the conduct of offender since his conviction has been such as to justify a remission of the sentence, he shall refer the matter to the authority or officer specified in section 130. 25

Fresh
sentence
after sus-
pension.

136. Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then—

(a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently;

(b) if the further sentence is for a period of three months or 30 more and is not suspended under this Act, the offender shall also be committed to prison or Force custody for the unexpired portion of the previous sentence, but both sentences shall run concurrently; and

(c) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under section 134 or section 135 continue to be suspended.

137. The powers conferred by sections 130 and 134 shall be in addition to, and not in derogation of, the power of mitigation, remission and commutation. Scope of power of suspension.

138. (1) Where in addition to any other sentence the punishment of dismissal has been awarded by a Security Force Court, and such other sentence is suspended under section 130, then, such dismissal shall not take effect until so ordered by the authority or officer specified in section 130. Effect of suspension and remission on dismissal.

(2) If such other sentence is remitted under section 134, the punishment of dismissal shall also be remitted. 15

Powers
and
duties
confer-
able and
impos-
able on
mem-
bers of
the
Force.

139. (1) The Central Government may, by general or special order published in the Official Gazette direct that, subject to such conditions and limitations, and within the local limits of such area adjoining the borders of India, as may be specified in the order, any member of the Force may,—

(i) for the purpose of prevention of any offence punishable under the Passport (Entry into India) Act, 1920, the Registration of Foreigners Act, 1939, the Central Excises and Salt Act, 1944, the Foreigners Act, 1946, the Foreign Exchange Regulation Act, 1947, the Customs Act, 1962 or the Passports Act, 1967 or of any cognizable offence punishable under any other Central Act; or

34 of 1920.
18 of 1939.
1 of 1944.
31 of 1946.
7 of 1947.
52 of 1962.
15 of 1967.

(ii) for the purpose of apprehending any person who has committed any offence referred to in clause (i),

exercise or discharge such of the powers or duties under that Act or any other Central Act as may be specified in the said order, being the powers and duties which, in the opinion of the Central Government, an officer of the corresponding or lower rank is by that or such other Act empowered to exercise or discharge for the said purposes.

(2) The Central Government may, by general or special order published in the Official Gazette, confer or impose, with the concurrence of the State Government concerned, any of the powers or duties which may be exercised or discharged under a State Act by a police officer upon a member of the Force who, in the opinion of the Central Government, holds a corresponding or higher rank.

(3) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in

the order or both Houses agree that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order.

140. (1) In any suit or proceeding against any member of the Protection Force for any act done by him in pursuance of a warrant or order issued by a competent authority, it shall be lawful for him to plead that for such act was done by him under the authority of such warrant or order.

(2) Any such plea may be proved by the production of the warrant or order directing the act, and if it is so proved the member of the Force shall thereupon be discharged from liability in respect of the act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such warrant or order.

(3) Notwithstanding anything contained in any other law for the time being in force, any legal proceeding (whether civil or criminal) which may lawfully be brought against any member of the Force for anything done or intended to be done under the powers conferred by, or in pursuance of any provision of this Act or the rules, shall be commenced within three months after the act complained of was committed and not otherwise, and notice in writing of such proceeding and of the cause thereof shall be given to the defendant or his superior officer at least one month before the commencement of such proceeding.

141. (1) The Central Government may, by notification, make rules Power for the purpose of carrying into effect the provisions of this Act. to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,—

(a) the constitution, governance, command and discipline of the Force;

(b) the enrolment of persons to the Force and the recruitment of other members of the Force;

(c) the conditions of service (including deductions from pay and allowances) of members of the Force;

(d) the rank, precedence, powers of command and authority of the officers, subordinate officers, under-officers and other persons subject to this Act;

- (e) the removal, retirement, release or discharge from the service of persons subject to this Act;
- (f) the purposes and other matters required to be prescribed under section 13;
- (g) the convening, constitution, adjournment, dissolution⁵ and sittings of Security Force Courts, the procedure to be observed in trials by such courts, the persons by whom an accused may be defended in such trials and the appearance of such persons thereat;
- (h) the confirmation, revision and annulment of, and¹⁰ petitions against, the findings and sentences of Security Force Courts;
- (i) the forms or orders to be made under the provisions of this Act relating to Security Force Courts and the awards and infliction of death, imprisonment and detention;¹⁵
- (j) the carrying into effect of sentences of Security Force Courts;
- (k) any matter necessary for the purpose of carrying this Act into execution, as far as it relates to the investigation, arrest, custody, trial and punishment of offences triable or punishable²⁰ under this Act;
- (l) the ceremonials to be observed and marks of respect to be paid in the Force;
- (m) the convening of, the constitution, procedure and practice of, Courts of inquiry, the summoning of witnesses before²⁵ them and the administration of oaths by such Courts;
- (n) the recruitment and conditions of service of the Chief Law Officer and the Law Officers;
- (o) any other matter which is to be, or may be prescribed³⁰ or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary for the proper implementation of this Act.
- (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or³⁵

both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything 5 previously done under that rule.

142. (1) The Border Security Force in existence at the commencement of this Act shall be deemed to be the Force constituted under this Act.

(2) Members of the Border Security Force in existence at the 10 commencement of this Act shall be deemed to have been appointed as such under this Act.

(3) Anything done or any action taken before the commencement of this Act in relation to the constitution of the Border Security Force referred to in sub-section (1), in relation to any person 15 appointed or enrolled, as the case may be, thereto, shall be as valid and as effective in law as if such thing or action was done or taken under this Act:

Provided that nothing in this sub-section shall render any person guilty of any offence in respect of anything done or omitted to be 20 done by him before the commencement of this Act.

Provi-
sions
as to
existing
Border
Security
Force.

STATEMENT OF OBJECTS AND REASONS

The Border Security Force was created towards the end of 1962 when the Directorate-General of Border Security Force was set up in the Ministry of Home Affairs under a senior police officer designated as the Director-General of Border Security Force. This Force has been charged with the responsibility of ensuring the security of the Indo-Pakistan international border, instilling a sense of security among the people living in the border areas, and preventing trans-border crime, smuggling and unauthorised entry into or exit from Indian territory. The Force was raised under the Central Reserve Police Act, 1949. However, considering the nature and purpose of the Force and the experience gained during the last two years, it has been felt that the Force should be regulated by a separate self-contained statute which will provide for its special needs, especially the needs of efficiency and discipline. The present Bill seeks to achieve this object.

2. As the Border Security Force is charged with the policing of the borders, the Bill seeks to ensure that the standards of efficiency and discipline of the Force are of a very high order.

3. The notes on clauses explain in brief the various provisions of the Bill.

Y. B. CHAVAN.

NEW DELHI;
The 4th April, 1968.

Notes on clauses

Clause 2.—This clause defines the various expressions commonly used in the Bill.

Sub-clause (1) (a) of this clause defines 'active duty'. Broadly speaking, according to this definition, a member of the Force will be considered to be on active duty during the period—

(a) that he is attached to or forms part of a unit of the Force which is engaged in operations against the enemy or which is charged with patrolling or guard duties;

(b) that he serves in any area notified by the Central Government.

Certain offences such as under clauses 16, 20 and 21 are punishable more severely when committed on active duty. The definition is modelled on the definition of active service in the Army Act, 1950.

The definitions of 'civil offence', 'civil prison', 'criminal court', 'enemy', 'offence' are based upon the definitions of those expressions in the Army Act, 1950.

Clause 3.—This clause specifies the persons subject to the proposed legislation.

Clause 4.—This clause provides for the constitution of the Border Security Force. It has to be read with clause 142 which deals with the existing Border Security Force.

Clause 5.—This clause provides for the general superintendence, direction and control of the Force and appointment of officers of the Force.

Clause 6.—This clause deals with enrolment of persons to the Force.

Clause 7.—This provides for liability of members of the Force for service outside India.

Clauses 8 to 12.—These clauses deal with tenure of service, etc., of members of the Force.

Clause 13.—This clause seeks to impose certain restrictions on the rights of members of the Force to form associations, and on their freedom of speech. The clause is similar to section 3 of the Police Forces (Restriction of Rights) Act, 1966.

Clauses 14 to 45.—These clauses seek to penalise the commission by the members of the Force of the various acts which would be prejudicial to the maintenance of discipline, good order and efficiency of the Force. These clauses follow, subject to certain modifications, the provisions relating to offences contained in sections 34 to 68 of the Army Act, 1950. The modifications relate, apart from non-inclusion of provisions peculiar to the Army, to reduction in the punishments for certain offences.

Clauses 46 and 47.—In order that the authorities of the Force may have effective control over the persons subject to the proposed legislation, clause 46 seeks to make it an offence thereunder for such person to commit a 'civil offence' that is to say, an offence triable by courts of ordinary criminal justice, but civil offences of murder, culpable homicide not amounting to murder and rape committed by a person subject to the proposed legislation against a person not so subject are not triable under the proposed legislation except under certain circumstances. These clauses which are modelled on sections 69 and 70 of the Army Act, 1950, have to be read with clauses 75, 80 and 81.

Clause 48.—This clause sets out the various punishments which may be awarded by Security Force Courts.

Clause 49.—This clause enables a Security Force Court to take into account the nature and degree of the offence committed and award to the accused person convicted for any offence under clauses 14 to 45 the punishment prescribed by the relevant clause or a punishment lower in the scale within the meaning of clause 48.

Clause 50.—This clause sets out the punishments which may be awarded together by Security Force Courts.

Clause 51.—This provides that enrolled persons sentenced on active duty to dismissal or imprisonment or both may be retained to serve in the ranks. This is necessary as it may not be feasible to get a substitute for such a person immediately.

Clauses 52 to 55.—These deal with imposition of certain minor punishments for offences under the legislation without the intervention of a Security Force Court. Clause 53 seeks to authorise com-

mandants and other officers specified by the Director-General with the consent of the Central Government to try in the prescribed manner any person lower in rank than a subordinate officer for an offence and award one or more of the punishments specified in the clause. Clause 54 impose certain limitations in respect of the award of these punishments. Clause 55 authorises a Deputy Inspector-General or other officer specified by the Director-General with the consent of Central Government to try in the prescribed manner any person of or below the rank of a subordinate officer and award one or more of the minor punishments specified in the clause. Powers under clauses 53 and 55 are proposed to be used in cases where having regard to the nature and degree of the offence one of the minor punishments would be adequate.

Clause 56.—This clause provides for imposition of collective fines in case of loss or theft of weapons or ammunition of a unit of the Force upon the subordinate officers, under-officers and men of the unit considered to be responsible for the loss or theft. To avoid abuse, it has been provided that the power can be exercised only by an officer not below the rank of the commandant of a battalion.

Clauses 57 to 62.—These clauses deal with arrest and proceedings before trial. Clause 57 provides that any person charged with an offence under the proposed legislation may be taken into Force custody under the orders of a superior officer but an officer who is engaged in a quarrel, affray or disorder may be ordered into Force custody by even a officer inferior in rank. Clause 58 provides for the action that has to be taken after arrest. The charge against every person taken into Force custody must be investigated within forty-eight hours (excluding Sundays and other public holidays) unless investigation within that period is impracticable having regard to the public service. In case of delay the matter has to be reported to superior authorities. Clause 59 provides that in every case where any person who is not on active duty remains in Force custody for a longer period than eight days without a Security Force Court for his trial being convened, a special report giving reasons for the delay should be submitted. A similar report should be forwarded at intervals of eight days until a Security Force Court is convened or such person is released from custody. Clauses 60 and 61 provide for the assistance of magistrates, police officers and other civil authorities in the matter of apprehension and arrest of persons accused of offences under the legislation and deserters from the Force. Clause 62 provides for inquiry into absence of a person subject to the legislation without leave.

Clause 63.—This clause provides for appointment of provost

officers of the Force and defines their functions and duties. Provost officers are intended to serve as the internal police of the Force.

Clause 64.—This clause provides for three kinds of Security Force Courts, namely General Security Force Courts, Petty Security Force Courts and Summary Security Force Courts, for the trial of offences under the proposed legislation. The provisions in the Bill relating to these courts are based subject to some modifications, on the provisions of the Army Act, 1950 as to Courts-Martial. The important modification is that while the Army Act provides for four kinds of Courts-Martial the Bill provides for only three kinds of Security Force Courts.

Clauses 65 to 74 deal with convening of Security Force Courts, the composition of Security Force Court and their powers.

Clause 75.—This clause prohibits a second trial in respect of the same offence.

Clause 76.—This clause prescribes a period of limitation for trial of all offences under the legislation except the offence of desertion in certain cases.

Clauses 77 and 78.—These clauses deal with the liability of a person who has ceased to be subject to the legislation after the commission of an offence thereunder.

Clause 79.—This deals with place of trial.

Clauses 80 and 81.—These clauses deal with choice of forum for the trial of offences in respect of which Security Force Courts and criminal courts have concurrent jurisdiction.

Clauses 82 to 106.—These deal with procedure of Security Force Courts and are based upon sections 128 to 152 of the Army Act which deal with procedure of Courts-Martial. In particular, clause 87 seeks to apply the provisions of the Indian Evidence Act, 1872 to all proceedings before Security Force Courts.

Clauses 107 to 118 deal with confirmation and revision of findings and of sentences of Security Force Courts. These clauses follow closely the provisions contained in sections 153 to 165 of the Army Act in regard to confirmation and revision of sentences of Courts-Martial.

Clauses 119 to 138 deal with execution of sentences of Security Force Courts, pardon of persons convicted by such courts, remission or suspension of such sentences, etc. These clauses follow the corresponding provisions contained in sections 166 to 190 of the Army Act, 1950.

Clause 139.— Taking into account the functions which the Border Security Force may be called upon to perform in regard to the patrolling of the borders of India, checking trans-frontier offences particularly unlawful infiltrations across the borders, etc., sub-clause (1) of this clause seeks to empower the Central Government to confer on members of the Force powers exercisable by other Government officers under Central Acts in regard to the prevention of any offence against such Acts or the apprehending of any person who has committed any such offence. In the case of Central Acts expressly mentioned in the clause, the powers can be conferred in respect of all offences because such offences are primarily of a trans-frontier nature. In the case of other Central Acts, the powers can be conferred only in respect of cognizable offences.

Sub-clause (2) of this clause seeks to empower the Central Government to confer upon members of the Force powers exercisable under State Acts, by police officers holding corresponding ranks. The sub-clause makes it clear that such powers may be conferred only with the concurrence of the State Government concerned.

Clause 140.— This clause provides for protection of acts of the members of the Force and it is on the same lines as section 17 of the Central Reserve Police Force Act, 1949.

Clause 141.— This deals with the power of Central Government to make rules.

Clause 142.— This clause provides that the existing Border Security Force shall be deemed to be the Force constituted under the proposed legislation and makes the necessary and usual saving provisions in regard to persons appointed to the existing Force and as to action taken and things done in relation to the constitution of the existing Force and connected matters.

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for the constitution of the Border Security Force. Clause 5 provides for appointment of certain officers of the Force. Clause 6 provides for enrolment of persons to the Force. Clause 63(1) deals with appointment of provost officers of the Force; while clause 83 read with Clause 2(1) (c) deals with appointment of law officers of the Force.

2. The Border Security force which was constituted in December, 1965, for the policing of Indo-Pakistan border will be deemed to have been constituted under the proposed legislation (*vide* clause 142). Prior to the constitution of the Border Security Force, Government of India were reimbursing to the State Governments concerned the cost of policing the Indo-Pakistan border. The State Border Security Police Battalions which were deployed on Indo-Pakistan border in December, 1965, were transferred to the Border Security Force.

3. All expenses incurred in connection with the administration of this Force would be met from the Consolidated Funds of India. As the Force has already been constituted, no additional expenditure of a non-recurring nature is likely to be involved when the Bill is enacted and brought into force. The recurring expenditure on the administration of the Force during 1967-68 was of the order of Rs. 18.21 crores; it is likely to go up by about Rs. 2 crores because of some addition to the existing strength of the Force.

4. The only additional expenditure which is likely to be incurred when the Bill is enacted and brought into force will be that on the appointment of law officers. Expenditure on this account is expected to be about Rs. 2 lakhs a year. No expenditure of a non-recurring nature is involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 141 of the Bill authorises the Central Government to make rules for carrying into effect the provisions of the proposed legislation. The matters in respect of which such rules may be made include the constitution, governance, command and discipline of the Force, the enrolment of persons to the Force and the recruitment of other members to the Force, the conditions of service (including deductions from pay and allowances) of members of the Force, the rank, precedence, powers of command and authority of the officers, subordinate officers and other members of the Force, the matters required to be prescribed under clause 13 of the Bill, the convening, constitution, adjournment, dissolution and sitting of Security Force Courts, the procedure to be followed by such Courts and other matters relating thereto, the ceremonials to be observed and marks of respect to be paid in the Courts, the constitution, procedure and practice of courts of inquiry, recruitment and conditions of service of Law Officers, etc. The matters in respect of which rules may be made under clause 141 are essentially matters of detail or procedure and are merely ancillary to the proper implementation of the legislation.

The rule making power sought to be conferred by the clause is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary.

